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Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, on his visit to Hungary from 8 to 16 February 2016, during which he examined the legal, institutional and administrative framework for the promotion and protection of human rights. In particular, he focused his assessment on the question of whether human rights defenders in Hungary operate in a safe and enabling environment. The Special Rapporteur concludes that, while the environment is sufficiently safe, there are significant challenges in ensuring that defenders work in a conducive environment, free from harassment, stigmatization or obstruction. The report contains a series of recommendations to all relevant stakeholders with a view to overcoming the challenges facing human rights defenders in Hungary.

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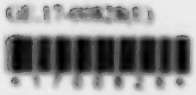

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Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary*

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* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the situation of human rights defenders conducted an official visit to Hungary from 8 to 16 February 2016, at the invitation of the Government. The objective of the visit was to assess the situation of human rights defenders in the country in the context of the obligations and commitments of the State under international human rights law and in light of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). An examination of the legal, institutional and administrative framework in the country for the promotion and protection of human rights was of particular importance to the assessment.

2. In the course of his visit, the Special Rapporteur met high-level representatives of the Office of the Prime Minister and of the Ministries of Foreign Affairs, Internal Affairs and Justice. He also met representatives of the Legislation Committee of the National Assembly, the Prosecutor-General, the Ombudsman and the Constitutional and Supreme (Kuria) Courts. The Special Rapporteur also held discussions with officials from the Office of Immigration and Nationality, the Government Control Office and the National Authority for Data Protection and Freedom of Information. He also met members of staff of the Office of the United Nations High Commissioner for Refugees and members of the diplomatic corps.

3. The Special Rapporteur visited Budapest, Miskolc and Szeged, where he met local authorities and a wide range of human rights defenders, academicians and representatives of non-governmental organizations (NGOs), which reinforced his impression of an active and engaged civil society in Hungary.

4. The Special Rapporteur thanks the Government of Hungary for extending an invitation to him and for its excellent cooperation throughout the visit, as well as for its continued assistance with additional information after the visit. He is grateful to everyone who took the time to meet him and share their valuable experiences and insights, and to those who helped to organize the visit.

II. Background

5. This was the first visit of a holder of the mandate to Hungary, which has gone through significant and rapid changes over the past decades. Hungary has transitioned towards the free market and has set the foundations of democracy after a long period of authoritarianism. After 1989, the old Soviet-style constitution was amended by Hungary to ensure constitutional checks and balances on State power.

6. The country is a multiparty parliamentary democracy with a unicameral National Assembly. The National Assembly elects the President every five years, who in turn appoints a Prime Minister from the majority party or coalition, following national elections every four years. The governing centre-right party, Fidesz-Hungarian Civic Union (Fidesz) and its junior partner, the Christian Democratic People's Party came to power in 2010 and were re-elected with a two-thirds majority in April 2014. Despite losing their supermajority in the parliament in February 2015 after a by-election defeat, the ruling parties are said to continue to dominate the political scene.

III. International and regional framework

7. Hungary is a party to 14 international human rights treaties and conventions. The country's constitution foresees that the national law be in conformity with the generally recognized rules of international law. Other sources of international law become part of the Hungarian legal system by promulgation into domestic legal regulations. If any domestic rules appear to be in contravention of the human rights obligations of Hungary, the ongoing proceedings are suspended by the courts and transmitted to the Constitutional Court, which can ultimately nullify the conflicting domestic law (see A/HRC/WG.6/25/HUN/1).

8. However, the following international protocols or treaties have yet to be ratified: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance. In that connection, the Special Rapporteur joins the calls by other United Nations human rights mechanisms in encouraging the Government to ratify the remaining treaties.

9. Hungary is a member of the European Union and its membership is contingent upon respect for a set of common principles, on which the Union is founded. For example, article 2 of the Treaty on European Union underlines the "values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."

10. Human rights, democracy and the rule of law constitute the three founding pillars of the Council of Europe, a regional organization of which Hungary is a member. It is also a participating State in the Organization for Security and Cooperation in Europe (OSCE), which strongly advocates for the human dimension of security and for the promotion of full respect for human rights and fundamental freedoms.

11. In line with international human rights law, the primary duty to promote and protect human rights and fundamental freedoms lies with the State. That obligation includes guaranteeing the right of everyone, individually and in association with others, to strive for the protection and realization of human rights. In other words, every person has the right to defend all human rights for all people. That is the essence of the Declaration on Human Rights Defenders, which was reinforced by subsequent resolutions adopted by the General Assembly and the Human Rights Council.

12. The Hungarian State is therefore under an obligation to take concrete steps to create the necessary conditions, including in the political and legal domains, to ensure that everyone in the country can enjoy and promote all human rights and freedoms in practice.

13. As a cornerstone principle of his mandate, the Special Rapporteur has unceasingly emphasized that ensuring a safe and enabling environment for defenders is a principal part of that responsibility. His visit therefore focused primarily on assessing some of the basic elements of the enabling environment, namely a conducive legal, institutional and administrative framework; access to justice; a strong and independent national human rights institution; effective protection policies and mechanisms paying attention to groups at risk and applying a gender-sensitive approach; non-State actors that respect and support the work of human rights defenders; and a strong and dynamic community of defenders. The following sections of the report provide a more detailed analysis in the light of those elements.

IV. A safe and enabling environment for human rights defenders?

14. Overall, human rights defenders have been able to carry out their work in Hungary in safety. The Special Rapporteur was very much impressed during his visit by the dynamism and competence displayed by Hungarian civil society, which is made up of over 63,000 registered organizations and other groups.

15. However, he was alarmed to observe that human rights defenders increasingly operate in a rather polarized and politicized environment. They are exposed to serious challenges which, in some instances, appear to amount to violations of their fundamental rights and freedoms, as well as of their legitimate right to promote and defend human rights, as enshrined in the Declaration on Human Rights Defenders. He hopes that the assessment contained in his report will guide and assist the Government and other related stakeholders to take urgent and concrete measures to address those challenges, with a view to ensuring that defenders carry out their valuable activities in a safe and enabling environment.

A. Legal, institutional and administrative framework

1. The constitutional framework and rule of law

16. Since 2011, far-reaching and extensive constitutional changes have had a profound effect on the civil society environment. The ruling party's supermajority in the parliament has allowed the Government to adopt measures that have reshaped the constitutional and institutional framework of the State. From discussions with many observers in the country, the Special Rapporteur formed an overwhelming impression that the reforms have generally weakened independent institutions and eroded democratic checks and balances, by bringing them increasingly under the control of the executive power, or reducing their capacity to exercise effective control over the Government.

17. A new constitution, the Fundamental Law and over 600 cardinal acts and other pieces of legislation have been adopted since 2011. The Fundamental Law enshrined human rights as inalienable, interdependent and indivisible. However, its contents are specified through the so-called "cardinal" laws (organic laws). It should be noted that the European Commission for Democracy through Law (Venice Commission) raised two key criticisms in its opinion on the Fundamental Law and the use of the cardinal laws.[1] First, it is often left to the cardinal laws to regulate in detail the most important society settings (the constitution has over 50 references to them), resulting in significant gaps in rule of law issues. Secondly, the preference in the constitution for the cardinal laws, rather than ordinary legislation cannot be justified in other areas, such as family legislation or social and taxation policy, and the provisions contained in the cardinal laws are not accessible to any new parliamentary majority unless they secure a two-thirds majority.

18. The general assessment of the legal reforms would indicate that they have had an overall adverse impact on human rights and democracy in the country by including limitations on such fundamental human rights as freedom of expression, information, religion, privacy, family life and the rights of minorities. Those constitutional changes have gradually removed important checks on the executive branch and weakened the independence of the Constitutional Court. They have led to the centralization and tightening

[1] See European Commission for Democracy through Law (Venice Commission), opinion No. 621/2011 on the new constitution of Hungary, 20 June 2011.

of government control over the judiciary, the media, religious organizations and other spheres of public life, directly or indirectly affecting human rights. The new constitution and other controversial measures adopted during the period in question have helped the Government "to entrench its personnel, as well as its nationalist, socially conservative policies, within public institutions".[2]

19. Furthermore, most laws have been introduced in a rushed manner through fast-track procedures. While expeditiousness in enacting legislation may be justified in certain contexts, the Special Rapporteur stresses the importance of observing procedural safeguards to ensure democratic scrutiny of proposed reforms. Legislative reforms in Hungary were not reinforced by procedural safeguards and were adopted with little or no public debate, or meaningful consultation with stakeholders and civil society.

20. The Special Rapporteur acknowledges that the Government has adopted numerous national human rights strategies relating to such fields as the social equality of men and women, elderly people, youth, Roma and environmental protection, which contribute to the strengthening of human rights in the country. However, he emphasizes that those policies will continue to be hindered by the range of other laws and policies in place, which have the opposite effect.

21. There is an increasing consensus among international, regional and local observers that these measures have in sum weakened a well-functioning democracy. In 2013, the United Nations High Commissioner for Human Rights urged the Government to revoke a series of constitutional changes, widely criticized by international and regional human rights bodies as representing a backward step in human rights protection, emphasizing that the changes undermined the independence of judges and were a serious threat to democracy.

22. The Hungarian authorities have been criticized by and been in conflict with European Union institutions and other international organizations regarding the controversial institutional reforms and political practices of the Government.[3] The European Union responded to the deteriorating condition of the rule of law in Hungary by initiating three infringement proceedings to address specific violations of European Union law, namely on new legislation that lowered the retirement age for judges, prosecutors and notaries and resulted in the early dismissal of 274 judges; the independence of the new data protection supervisory authority; and the independence of the National Central Bank. Only the first two infringement proceedings reached the Court of Justice of the European Union, while the third was closed following amendments of the relevant laws by Hungary. In December 2015, another infringement procedure was launched for violating European Union asylum regulations.

23. The Council of Europe, and in particular the Venice Commission, has been vocal in addressing the situation in Hungary through a series of letters, communications, reports and authoritative opinions in the period between 2011 and 2015. The Commissioner for Human Rights of the Council has also been outspoken, including in the report on his country visit of December 2014 and in his public communications. OSCE has also spoken out on several occasions regarding laws and measures that threatened the fundamental freedoms of expression and media, free and fair elections and civil society.

24. The statement made by the Prime Minister in mid-2014 about his plans to build an "illiberal" State raised further controversy and questions about the intentions of Hungary

[2] Economist Intelligence Unit, Hungary country report, December 2016, p. 3.
[3] Ibid., p. 5

concerning its international and regional human rights obligations and commitments.[4] Civil society has consequently made repeated calls for the European Parliament to initiate a procedure under the new Rule of Law Framework adopted in March 2014 to react to threats to the rule of law in member States of the European Union.[5] The new mechanism aims to fill the gap between infringement procedures and the mechanism provided for in article 7 of the Treaty on European Union to deal with situations where there is an apparent breach in a member State of fundamental values or principles, such as the rule of law.

2. Freedom of expression

25. The Hungarian constitution and laws provide for freedom of expression and the media. However, the legislative changes introduced by the Government have had a deleterious impact on freedom of expression in the country.

26. In 2010, two new laws were passed: Act CIV on the Freedom of the Press and the Fundamental Rules on Media Content (the Press Freedom Act) and Act CLXXXV on Media Services and Mass Media (the Media Act), which were dubbed "the media law package". They were followed by constitutional amendments and other measures, which resulted in a complete overhaul of the Hungarian media setting. The media laws were widely criticized.

27. In April 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression voiced concern about the media law in Hungary, stating that it could be used to curb the freedom of the press. The Commissioner for Human Rights of the Council of Europe concluded that the new media legislation encroached on media freedom, threatened the independence and pluralism of the media and as a whole had "a corrosive cumulative impact". He further stated that the "aggregate result is an unfortunate narrowing of the space in which the media can operate freely in Hungary".[6] The OSCE Representative on Freedom of the Media has repeatedly denounced the media laws as inconsistent with OSCE standards on media freedom and pluralism, suggesting they be reviewed in line with those standards.[7] Although the media laws have been amended, concerns remain and they have yet to be brought into full compliance with international standards.[8]

28. Media regulation was consolidated under the supervision of a single entity, the National Media and Infocommunications Authority, with its President also serving as Chair of the Media Council, which is tasked with content regulation. The Chair of the Media Council nominates the executive directors of all public media. According to the report of the United States of America State Department on human rights in Hungary in 2015, the broad powers of the media regulatory body, combined with a high level of media concentration and an advertising market strongly dependent on governmental contracts, has maintained a climate conducive to self-censorship and political influence. The media laws specify new content regulations for all media platforms, outline the powers of the new

[4] See, for example, www.euobserver.com/political/125128and www.bloomberg.com/news/articles/2014-07-28/orban-says-he-seeks-to-end-liberal-democracy-in-hungary.

[5] See International Federation for Human Rights, "Hungary: democracy under threat", November 2016, p. 6.

[6] "Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media", 25 February 2011.

[7] See, for example, Katrin Nyman-Metcalf, "Analysis of the Hungarian media legislation", 28 February 2011, commissioned by the Office of the OSCE Representative on Freedom of the Media.

[8] See International Federation for Human Rights, "Hungary: democracy under threat", section 2.2.1.

media regulatory body and set out sanctions for breaches of the law. The media itself has also undergone increased State regulation.

29. All media outlets, including print and online services, must register with the Government within 60 days of commencing operations, a requirement which seems to diverge from Council of Europe and OSCE standards.[9]

30. The funding and content production for all public media is centralized under the Media Service Support and Asset Management Fund, supervised by the Media Council. The law also regulates the content of broadcast media, including specific details as to what type of programming may be aired and when. The Media Council can initiate a regulatory procedure of "unbalanced reporting", which can ultimately lead to suspension of the right to broadcast. Online media can be blocked if they are found to be in violation, with restrictions on legal content. Sanctions are reported to be disproportionately severe, especially those pertaining to interruption of the activities of media outlets for a certain time, withdrawal of their licence or registration, or blocking user access to media content.[10]

31. Defamation remains a criminal offence in Hungary and it is a charge regularly brought against investigative journalists, defenders and watchdog organizations, in combination with related offences, such as hooliganism.[11] For example, in November 2015, prosecutors laid charges against 17 individuals for having posted on Facebook about a suspicious property sale by the mayor of Siófok. A month later, a blogger was charged with defamation for having refuted the Facebook postings of a district mayor in Budapest, who had accused refugees of causing fires, littering and crime.

32. Furthermore, the 2013 amendment to the penal code provides for imprisonment of 1 to 3 years of any person who knowingly creates or distributes false or defamatory video or audio recordings. Journalists who met with the Special Rapporteur during his visit also raised serious concerns about the civil code provision of 2014, which allows for penalties for taking pictures without the permission of everyone in the photograph, as opposed to the previous requirement to seek permission only for publishing photographs.

33. Journalists who publish critical articles are blacklisted from accessing public events or officials, or can lose their jobs. For example, the television channel RTL Klub, along with other Hungarian media outlets such as 444.hu or hvg.hu, has frequently been denied access to events held in government premises or not been invited to government press conferences.[12]

34. During the visit, the Special Rapporteur heard testimonies of growing self-censorship among media professionals in the face of defamation lawsuits, fines, dismissal or retaliation. The tax and advertising policies in Hungary have reportedly also been used to reward government allies and punish opponents, by threatening their economic viability.[13] That has resulted in self-censorship, with private media increasingly refraining from covering politically sensitive issues for fear of losing government support or facing other retaliation.[14]

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[9] See resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe and Katrin Nyman-Metcalf, "Analysis of the Hungarian media legislation".

[10] See Venice Commission, opinion No. 798/2015 on media legislation of Hungary, 22 June 2015.

[11] Freedom House, "Freedom of the Press 2016, Hungary".

[12] See Index on Censorship, "Hungary: Independent media facing soft censorship", 21 January 2016.

[13] See Committee to Protect Journalists, "Balancing act: press freedom at risk as EU struggles to match action with values", 2015.

[14] See International Federation for Human Rights, "Hungary: democracy under threat", p. 30.

35. Some interlocutors pointed to growing incidents of censorship in the public media. For example, in August 2015, a leaked memo revealed that the Media Service Support and Asset Management Fund had instructed public television employees to avoid airing images of women and children in their coverage of the refugee crisis, a highly politicized issue at the time.[15]

3. Freedom of information

36. Hungary was once renowned for its Act on Freedom of Information, which used to guarantee access to public interest information and was supported by strong oversight institutions, headed by a parliamentary ombudsman. However, repeated amendments to the regulatory framework have attracted criticism from journalists and watchdog organizations for restricting the accessibility of public interest data and creating the conditions for frequent denials of requests for such information.

37. The 2015 amendment to the Act, adopted within days of its introduction and without public consultation, allows government agencies that possess public interest data to charge the requesting party the "labour costs" associated with completing a request for information, an amount to be determined by the agency concerned. Besides the vaguely defined labour costs, the law allows public bodies to reject requests if the data requested supports future "decision-making" or if the petition is a repeat request, even if the initial request went unanswered.[16] In December 2015, two months after the law took effect, the Budapest Chamber of Commerce told the television channel RTL Klub that the implementation of its freedom of information request into the expenses and finances of the Chamber would cost between Ft 3 million and 5 million (between $11,000 and $18,000).[17]

38. The Special Rapporteur expressed concern during his visit about reports in a number of media outlets of a planned amendment to the legislation on postal services. The Hungarian Post is a one-stop service provider of an array of services, which include postal services, banking and financial and insurance services. The proposed amendment to the law would exclude the contracts of the Hungarian Post and the requests that "disproportionately hamper the business activities" from the scope of public interest information. It is feared that such a law, if adopted, would become a precedent to future strings of decrees exempting State-owned companies from freedom of information oversight.[18]

39. The Postal Services Act was approved by the parliament in March 2016, in yet another expedited procedure. The President however declined to sign it into law and sent it to the Constitutional Court for review. The Court subsequently ruled that since the Hungarian Post provides market services, some of the data related to its activities might constitute business secrets, which if made public could potentially harm its business activities.[19] Lower courts may still exercise their own discretion in deciding what specific data constitutes public information. However, some observers are worried that the ruling by

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[15] See www.theguardian.com/world/2015/sep/01/hungarian-media-told-not-to-broadcast-images-refugee-children-memo.

[16] See Freedom House, "Freedom of the Press 2016, Hungary".

[17] See www.hvg.hu/itthon/20151222_Milliokat_kellene_fizetnie_az_RTLnek_ha.

[18] See www.budapestbeacon.com/public-policy/fidesz-mp-submits-dont-bother-us-were-stealing-bill-2-0/32014 and www.444.hu/2016/02/10/benyujtottak-a-torvenyt-aminek-nyoman-soha-tobbet-semmi-sem-fog-kiderulni.

[19] See www.alkotmanybirosag.hu/sajto/kozlemenyek/kozlemeny-a-magyar-nemzeti-bankrol-es-a-postai-szolgaltatasokrol-szolo-torvenyek-modositasarol-szolo-torvenyek-elozetes-alkotmanyossagi-vizsgalatarol.

the Constitutional Court may encourage other State-owned enterprises to reject freedom of information requests on the same grounds.[20]

40. The mandate of the former Data Protection Ombudsman was terminated before the end of his term of office, which was found unlawful by the European Court of Justice in April 2014.[21] The Office was transformed into the National Authority for Data Protection and Freedom of Information, which was not seen by the European Commission as meeting the requirement of complete independence. The previous Ombudsman was elected by the parliament for a six-year period, however the head of the new authority is appointed by the President for a nine-year period. While the Government maintains that access to data is rarely rejected, unless it is a national security issue, the Special Rapporteur received numerous testimonies from journalists and civil society representatives on the challenges they faced in accessing public data.

41. The Special Rapporteur urges the Government to take measures to increase the scope of public interest information and the accessibility to such data, including information belonging to State-owned enterprises. This is an essential part of open and good governance, which should be urgently strengthened.

4. Freedom of association

42. The legal framework in Hungary is generally hospitable to freedom of association. It provides for three legal forms of NGO (association, foundation and civil law society), which are not legally restricted by the type of political activities they undertake, unless they seek "public benefit status", which allows them to access the National Cooperation Fund.

43. However, there have been critical amendments to two laws: the civil code and the non-profit act, which required NGOs to revise and modify their by-laws. The non-profit act laid out new conditions linking public benefit status to legally prescribed State services. Owing to a combination of a complex interpretation of the new conditions, absent legal aid and a lack of awareness of the new requirements, only a small fraction of NGOs that previously had public benefit status reportedly met the deadline of May 2014.

44. The new civil code required NGOs to amend specific details in their statutes once again, with a grace period up to March 2016. The procedure for registering an NGO is reported to be lengthy, often involving several rounds of requests by the courts for modifications. The Prosecutor's Office, which oversees the legality of civil society work, regularly appeals court decisions. According to legal experts, re-registration to obtain public benefit status takes on average 6-8 months and for some NGOs it has taken up to 16 months. Although the amended non-profit act foresaw the introduction of a simplified electronic registration system, it was not yet operational at the time of the Special Rapporteur's visit (while business enterprises have already been using simplified online registration). Furthermore, the regulations are considered by civil society as unnecessarily bureaucratic and stringent.

45. The Special Rapporteur urges the Government to support civil society organizations in their attempts to comply with new laws by providing them with legal aid and introducing a simple electronic registration system. He further recommends that the Government make registration more simple, non-onerous and expeditious and adopt a notification procedure, whereby associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization has been created. The Government should

[20] See www.budapestbeacon.com/economics/hungarys-constitutional-court-takes-one-step-forward-two-steps-back/33493.

[21] See *European Commission v. Hungary*, European Court of Justice, case No. C-288/12.

avoid adopting new laws that would require previously registered associations to re-register.

46. The information given to the Special Rapporteur during his visit confirms the reports that the situation of civil society in Hungary has worsened in the last several years. Besides the more rigid legal environment, the financial sustainability of NGOs, their ability to assert their interests, the underlying infrastructure servicing civil society, the general public's opinion of human rights defenders and the support base of NGOs have all reportedly changed for the worse.

47. Human rights defenders face enormous pressure due to public criticism, stigmatization in the media, unwarranted inspections and a reduction in State funding. The Special Rapporteur heard many testimonies of incidents, where the authorities had tried to delegitimize defenders and civil society representatives and, at the same time, undermine their work through excessive administrative and financial hurdles, as well as criminal defamation.

48. Furthermore, the authorities have effectively sought to restrict the work of civil society and increase supervision through such indirect means as investigations into funding, increased auditing, new Internet laws and increased media campaigns stigmatizing human rights defenders. Several organizations have decided to close their offices, discontinue programmes and lay off staff, owing to insufficient or unsustainable funding. Some NGOs providing community or social services have seen their contracts simply discontinued or interrupted after they published information or testimonies perceived as hostile to the Government.

49. Nearly every civil society interlocutor who met the Special Rapporteur raised alarm about the deeply regrettable targeting of the Fund Operator Consortium (composed of the Ökotárs, Autonomia, Demnet and Kárpátok Foundations), which managed the Norwegian NGO fund, and other NGOs that benefited from it. Since August 2013, Ökotárs and 13 other NGOs receiving European Economic Area grants have been stigmatized by newspapers as entities "serving foreign interests". Between April and July 2014, senior government officials from the Office of the Prime Minister called the NGOs "party-dependent, cheating nobodies" and "paid political activists who are trying to help foreign interests".[22] They also called for the Norwegian NGO fund to be suspended. A number of beneficiary organizations (mostly those working on human rights, women's rights organizations and watchdogs) were disturbingly blacklisted as the "dirty 13" by the authorities.

50. Subsequently, the Government Control Office began to investigate those NGOs and their financed projects. Since the mandate of the Control Office extends only to the use of Hungarian public money and the Norwegian NGO fund was financed by the European Economic Area, the legality of its audits has been questioned. In addition, the Control Office requested that various documents be handed over, but the NGOs refused to comply with those requests in which the names and personal details of their volunteers and participants in their past events were demanded.

51. On 8 September 2014, in a chilling message to civil society, police officers carried out raids on the offices of Ökotárs and Demnet, confiscating their files and computer servers. The raids were found to be unlawful by the courts in January 2015. The Government Control Office also requested the prosecutor to initiate criminal proceedings against the targeted NGOs, despite the fact that external audits carried out at the request of

[22] See Transparency International and others, "Timeline of governmental attacks against Hungarian NGO sphere", September 2016.

Norway revealed no irregularities. Even though no breaches of the law were found after the wide-ranging investigation, senior government officials continued to publicly denounce Ökotárs for carrying out its activities in an unlawful manner.

52. The Special Rapporteur is concerned about reported breaches of due process. There was clearly no presumption of innocence on the part of the Government, with senior government officials showing an openly biased approach to the NGOs in question and stigmatizing them in the media. The official website of the Government Control Office only cited news articles that portrayed the NGOs in negative terms, even though it was legally obliged to remain objective in its investigation.

53. During his visit, the Special Rapporteur was informed that the investigation had ended. Despite the serious accusations raised during the investigation, not a single proceeding had resulted in a conviction, but in at least one case a court had ruled that government measures in connection with a search warrant had been unlawful.[23] In fact, some government officials admitted to the Special Rapporteur that the investigation had been of a political nature and that the enormous amount of time and resources spent on scrutinizing civil society in vain could have been directed to unearthing serious white-collar crime in public offices Given the damage done to their reputations by the public stigmatization of the NGOs in question, it is regrettable that there has been no public apology from the authorities for breaches in due process or a public admission that they were proven to be innocent.

54. Following the court order of 5 September 2016, the Government Control Office was reportedly obliged to release official documents that revealed that the Prime Minister had actually ordered the investigation by the Control Office in 2014.[24] The revelations are even more regrettable, given that the futile and politicized investigation lasted two years, involved the auditing of 58 NGOs and triggered a police investigation lasting 16 months.

55. To date, the Special Rapporteur has received no updates on the future cycle of the Norwegian NGO fund, but was reassured by the Government of Norway that sustainable funding to independent civil society organizations will be continued in the next funding period.

5. Stigmatization of human rights defenders

56. During the second cycle of the universal periodic review, the Government stated that civil society played a crucial role in public life and in the justification of public decisions and had room for criticizing the Government. It further stated that it evaluated critical comments and encouraged dialogue (see A/HRC/33/9, para. 105).

57. Despite the establishment of an interministerial human rights working group and other platforms for civil society dialogue, the Special Rapporteur notes with regret that the scope and quality of the dialogue between civil society and decision makers has been steadily shrinking in Hungary. The authorities have displayed a growing lack of interest in such a dialogue, especially when it entails an exchange and debate of dissenting views.

58. During his visit, the Special Rapporteur noted that, given the disrupted checks and balances and feeble political opposition, human rights defenders who criticize the Government or raise human rights concerns are quickly intimidated and portrayed as "political" or "foreign agents". In October 2016, the Vice-Chair of Fidesz and of the

[23] Ibid.

[24] www.tasz.hu/informacioszabadsag/kideritettuk-hogy-orban-viktor-szemelyesen-rendelte-el-civilek-vegzalasat.

Parliamentary Committee on National Security announced his proposal to the Committee to investigate civil society organizations "cooperating with the (George) Soros network".[25]

59. The Special Rapporteur is concerned about the continued stigmatization of human rights defenders and about the chilling effect of the inflammatory language used by senior government officials on the public perception of the value of civil society. He shares the sentiments of civil society that "describing reputable organisations as paid political activists serves no legitimate purpose based on the known facts" and that "the role that civil society can play in the promotion of the rule of law and as a check on the misuse of power should be respected".[26]

60. In addition to unfriendly rhetoric from government officials, independent civil society organizations are denied access to State-run media outlets, face funding impediments, are blacklisted from government cooperation and are subjected to excessive and unjustified inspections.

61. The Special Rapporteur urges government officials to refrain from stigmatizing and intimidating human rights defenders. The Government should instead support the work of independent civil society, despite disagreements or criticisms, bearing in mind their invaluable role in advancing Hungarian society. The Government should review and abolish all administrative and legislative provisions that restrict the rights of defenders or obstruct their legitimate activities. National legislation should be brought into line with Hungarian obligations under international human rights law.

62. The Special Rapporteur urges the Government to widen and strengthen the civil society space, in view of the valuable role that human rights defenders play in the promotion of the rule of law and fundamental rights in Hungary.

6. Freedom of assembly

63. Hungarian law provides guarantees for the exercise of the right to freedom of peaceful assembly. Assemblies do not require a police permit to be obtained, but organizers must inform police of a planned demonstration in a public place at least three days in advance. Hungarian law authorizes the police to prohibit any gathering if it seriously endangers the peaceful operation of representative bodies or courts, or if it is not possible to provide for alternate routes for traffic. Police will disband an assembly in cases where a crime is committed or its commission is incited, or if the gathering results in the violation of the rights of others, involves armed protesters, or is organized despite an official ban. A decision to prohibit a public demonstration is open to judicial review. For example, the refusal of permission to hold a peaceful demonstration in front of the Prime Minister's residence was found unlawful by the Budapest court in July 2015.

64. However, the Special Rapporteur has received testimonies that demonstrations by human rights activists promoting the rights of the Roma and lesbian, gay, bisexual, transgender and intersex communities are held in a climate of fear and are strictly controlled for safety reasons. Human rights defenders from those communities cannot understand why the authorities could not take preventive measures to address threats arising from far-right extremists, rather than treating them as a threat to public security. In that context, it is noted that in September 2016, the tribunal in Eger ruled in a case related to discrimination by the police against Roma residents in Gyöngyöspata, during a march by the "For a better future" far-right neighbourhood watch group and other extremist groups in

[25] Frontline Defenders, "Annual report on human rights defenders at risk in 2016", p. 15.

[26] International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary", October 2015, p. 45.

2011. The court later found that the police had failed to protect the Roma residents threatened by the extremist groups and imposed excessive fines on local Roma for minor misdemeanours.

65. Concerns have also been raised about the excessive and indiscriminate use of force by the Counter-terrorism Centre against protesting migrants and journalists observing the protests on 16 September 2015. During the visit, the Special Rapporteur received reports of indirect intimidation of teachers and trade unionists from Miskolc, who organized a national protest in Budapest on 13 February 2016. Some of the teachers who wanted to participate in the protests were advised by officials to reconsider and the police were allegedly asking individuals about their plans to take part in the demonstration.

66. The Special Rapporteur urges the Government to ensure that human rights defenders who assemble peacefully are protected from individuals or groups of individuals, including agents provocateurs and counterdemonstrators, who aim to disrupt or disperse such assemblies. He further urges the Government to ensure that restrictions to peaceful assembly do not impair the essence of the right to assemble, are prescribed by law, are proportionate and necessary in a democratic society, and still allow demonstrations to take place within sight and sound of its object and target audience.

B. Access to justice

67. The Special Rapporteur considers it vital that constitutional reforms are accompanied by meaningful participation by the public, human rights defenders and civil society. The Human Rights Committee has interpreted the right to participation in public affairs, enshrined in article 25 of the International Covenant on Civil and Political Rights, as including a specific right to participate in constitution-making.[37] The Constitutional Court plays an important role in this regard and in preventing the abuse of power by other governmental institutions by reviewing their actions against the principles and rights enshrined in the constitution. According to the Government, in more than 100 cases since 2012, the Constitutional Court has declared some of the laws it has examined to be unconstitutional and overruled some judicial decisions (see A/HRC/33/9, para. 45).

68. However, there has been a reported tendency of the Government, especially with its prior parliamentary supermajority, not to respect independent constitutional control or to use the legislative majority to overturn Constitutional Court judgments almost as soon as they were issued.[38] Furthermore, access to the Constitutional Court has been radically limited by scrapping the previously robust system of *actio popularis*, which allowed any human rights defender to bring a case to the Court on issues of broad public concern.

69. The fourth amendment to the constitution of 2013 drastically limited the jurisdiction of the Constitutional Court, repealing all the decisions it had taken before 1 January 2012. As a result, all previous precedents of the Court cannot be invoked in new cases and there is no longer a judicial review of laws related to the central budget and to taxation issues. The legal changes banned the Court from reviewing constitutional amendments for substantive conflicts with constitutional principles, a measure which allowed the Government to reintroduce, through a constitutional amendment, the proposals that had been previously

[37] See Human Rights Committee general comment No. 25 (1996) on participation in public affairs and the right to vote.

[38] International Bar Association Human Rights Institute, "Courting controversy: the impact of the recent reforms on the independence of the judiciary and the rule of law in Hungary", September 2012, chap. 4.

struck down by the Court as unconstitutional. The substantively weakened Court is now only allowed to review the procedural validity of new amendments.

70. The increase in the number of constitutional judges from 11 to 15 and the extension of their mandate from 9 to 12 years, starting on 1 January 2012, have contributed to ensuring greater control of the Constitutional Court by the executive branch and its parliamentary majority.[29]

71. The Special Rapporteur calls for the restoration of the jurisdiction of the Constitutional Court through the repeal of the legal provisions that limit its jurisdiction and for a review of the composition of the committee that nominates constitutional judges, in order to address the perception of politicized judicial appointments.

72. He also notes the concerns shared by local and international observers about the weakening of the independence of the judiciary. For example, the new legal provisions to lower the retirement age for judges from 70 to 62 have allowed the Government to immediately remove almost all the presidents of courts and more than 270 judges. Besides concern about the compulsory retirement provisions,[30] the Venice Commission opined that concern about the legislation related to the endangerment of the independence of the judiciary as a whole.[31]

73. In its decision 9/a. 33/2012 (VII.17), the Constitutional Court of Hungary found the legal provisions unconstitutional and in contravention of the independence of the judiciary, and abolished them with retroactive effect. Parliament subsequently passed a law enabling former judges to be reintegrated, but on conditions less favourable than before.[32] Nevertheless, the remedial steps taken by the Government in respect of that legal reform were considered to be unsatisfactory.[33]

74. Furthermore, in May 2014, the European Court of Human Rights ruled on a petition from a former President of the Supreme Court, András Baka, who was relieved of his position as a result of the entry into force of the Fundamental Law and the reorganization of the functions of the Supreme Court. In its judgment, the Court found that Mr. Baka's right to access a court to review his dismissal had been breached and that his right to freedom of expression had been violated in retaliation for his public criticism of the Government's judicial reforms.[34] On 23 June 2016, the Grand Chamber of the European Court reaffirmed that Hungary had violated Mr. Baka's right to access a court and to freedom of expression.[35]

75. A new National Judicial Office has been established, with the power to replace the retiring judges and name new ones, as well as reassign specific cases from one court to another. The president is elected by the parliament, and as such "cannot be regarded as an organ of judicial self-government".[36] According to the International Bar Association, the

[29] International Federation for Human Rights, "Hungary: democracy under threat", p. 15.

[30] See *European Commission v. Hungary*, judgment of 6 November 2012, case No. C-286/12.

[31] Venice Commission, opinion No. 663/2012 on Act CLXII of 2011 on the legal status and remuneration of judges and Act CLXI of 2011 on the organization and administration of courts in Hungary, 19 March 2012.

[32] See Hungarian Helsinki Committee and others, "Undermining constitutionality", Hungarian fact sheet No. 1, September 2014, available from http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf.

[33] International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary", pp. 26-27.

[34] *Baka v. Hungary*, application No. 20261/12, judgment on the merits, 27 May 2014, paras. 73-79.

[35] Ibid., judgment, 23 June 2016.

[36] Venice Commission, opinion No. 663/2012, para. 51.

decision-making powers and effectiveness of the Office remain limited by legislative and practical impediments, and "contrary to international standards, the administration of justice is not governed by an independent authority with a substantial representation of the judiciary".[37]

76. Notwithstanding the above, the Special Rapporteur received many testimonies from human rights defenders indicating their confidence in the overall independence of the judiciary, which continues to provide remedy to violations of their rights and of the individuals they represent. In that context and given the increasing litigation facing human rights defenders, there is general agreement within civil society about the woeful lack of legal assistance. This is particularly the case because of a general fear among lawyers of taking human rights and sensitive cases for fear of retaliation from the Government.

77. The Special Rapporteur urges the Government to allocate budgetary resources to ensure independent legal assistance to human rights defenders. As weaknesses in the judicial system and flaws in the legal framework deprive human rights defenders of adequate access to justice, he encourages the Government to implement the recommendations of the Venice Commission to ensure that the judiciary can operate independently and effectively.

C. Effective protection policies and mechanisms for human rights defenders

78. In Hungary, there are no specific policies or mechanisms to protect human rights defenders from attacks, threats or harassment. Several testimonies heard during the visit show that some of the most vulnerable human rights defenders, namely those working on migration and Roma issues, would benefit greatly from such protection.

79. One of the outcomes of the first cycle of the universal periodic review was the establishment in 2012 of an interministerial human rights working group with an advisory nature. The working group has established a round table to facilitate consultations with civil society organizations (see A/HRC/33/9, para. 10). The draft national report prepared by the Government for the second cycle of the universal periodic review was circulated among the members of the round table for observations and inputs.

80. During the visit, however, the Special Rapporteur heard concerns that human rights activism had been labelled as a "political vocation" and NGOs are often perceived and labelled as political entities by government officials, drawing negative counter-attacks on critical views they may have expressed. Senior government officials have described NGOs as paid political activists who are trying to help foreign interests, which has encouraged the authorities to target human rights organizations through surprise financial audits, criminal investigations and public shaming, thus curtailing their activities. The frequency and tenacity of those political statements, which many perceive as an attempt to silence dissenting voices that speak out for human rights, raises concerns.

81. The Special Rapporteur urges the Government to distinguish between a political debate among political parties and a social dialogue with civil society pertaining to the promotion of human rights, and to refrain from conflating the two discourses, which is contributing to delegitimizing independent organizations and stifling critical views.

[37] International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary".

82. In recent years, several States have developed national mechanisms to protect human rights defenders through adopting laws and policies in consultation with other stakeholders. The Special Rapporteur recommends that the Government consider adopting national guidelines on the protection of human rights defenders and aim to establish a national mechanism for their protection, in consultation with civil society organizations. Such a mechanism should include specific measures to ensure prompt and independent investigation of all violations of the rights of defenders and the prosecution of alleged perpetrators, regardless of their status. It should also ensure access to just and effective remedies, including appropriate compensation. The Special Rapporteur remains available to the Government for any advisory assistance it may require in this connection.

D. Specific human rights defenders at risk

83. Not all human rights defenders see their situation as particularly exposed to risk, besides the general stigmatization and shrinking civil society space. However, some face particularly serious challenges that, in some instances, appear to amount to violations of their fundamental rights and freedoms, as well as of their legitimate right to defend human rights.

84. In Hungary, such groups include women human rights defenders, who are exposed to risks both as defenders and women, especially those who promote sexual and reproductive rights. Some of them face multiple and aggravated forms of discrimination, as well as visible and invisible forms of violence, that prevent them from carrying out their work in a safe and enabling environment. The Special Rapporteur's concerns were shared by the Working Group on the issue of discrimination against women in law and in practice in its end of mission statement in May 2016, in which it regretted that women's NGOs and NGOs representing lesbian, gay, bisexual, transgender and intersex and minority interests faced incidents of harassment, marginalization and accusations by senior government officials of having politicized and hostile agendas. Some women's NGOs were included in the government blacklist of 13 NGOs and government funding of NGOs has been directed mainly to organizations with nationalist and conservative agendas.

85. Lesbian, gay, bisexual, transgender and intersex defenders sometimes face difficult situations and are more often subject to social prejudice than others. For example, the 2015 Budapest Pride parade took place behind a heavy police barricade, where activists nonetheless experienced threats and hostility from some observers.

86. Defenders promoting economic, social and cultural rights and environmentalist organizations are sometimes labelled as being against development when they oppose development projects that have a detrimental impact on the rights of the local community. Some have been sued by companies and intimidated by the authorities for raising questions about factories or industries which pose environmental risks.

87. Whistle-blowers play a vital role in exposing corruption, fraud and mismanagement, and in preventing disasters that arise from negligence or wrongdoing. However, they are granted little protection beyond the mere existence of a law on whistle-blower protection. Most whistle-blowers have been subject to harassment and retaliation, including loss of employment and being blacklisted for future employment. The media portrays them in negative terms by naming and shaming them as troublemakers or foreign agents. That has a chilling effect, which could deter others from denouncing corruption or misconduct by public officials. Those who have suffered retaliation have sought reinstatement and compensation through the courts, but testimonies received show that a positive outcome is far from guaranteed. The Ombudsman function seems to be restricted to receiving reports and forwarding them to the competent authorities.

88. The right of journalists not to disclose their sources is limited because of the obligation to reveal sources in "exceptional circumstances". This exception, which does not apply to independent journalists, has reportedly been interpreted as only applying to criminal cases and following a court order.[38] The Special Rapporteur stresses the importance of protecting journalistic sources for press freedom and urges the Government to strengthen the legal and policy framework to protect whistle-blowers. Given the chilling effect that the failure to ensure such protection can have on the role of journalists and civil society as public watchdogs, he recommends reinforcing the existing legislation and establishing a strong and independent national agency that would have the power to grant legal protection and support for whistle-blowers.

89. During the visit, it became apparent that human rights defenders who were excessively at risk were Roma activists, owing to a widespread and long-term climate of xenophobia, leading to direct physical threats and intimidation. Several testimonies indicated severe threats or physical attacks against Roma activists throughout the country. In Miskolc, the Roma community and their leaders face rejection by the majority of residents and the local municipality. About 450 Roma residents on the outskirts of Miskolc were put at risk of forced eviction and possible homelessness in May 2014. Residents were threatened with eviction in August 2014, as part of efforts by the local administration to eliminate slums under a government-sponsored law adopted in May 2014.

90. According to the Government, a policy of zero tolerance of xenophobia and racism has been established (see A/HRC/33/9, para. 15). Anti-Semitic and anti-Roma statements are officially denounced by the Government. The rules of procedure of the parliament concerning hate speech have been strengthened and the Speaker has broad disciplinary authority, including the ability to request the exclusion of a member of parliament from a session and impose fines if he or she uses expressions deleterious to national, ethnic or religious groups or individuals.

91. Human rights defenders and grass-roots activists working on the rights of asylum seekers face acute risks of threats to their person and their families due to the increased politicization and stigmatization of their work. The Special Rapporteur has received several reports of direct threats, anonymous phone calls and text messages, hacking of personal social media and trolling on social media. There are credible reports that festering anti-immigrant sentiment has led to increased scrutiny and harassment of organizations assisting refugees in Hungary.[39] According to reports, 22 NGOs that issued a statement calling for the invalidation of the referendum on refugee quotas due to low turnout, were threatened by the authorities with "full screening" of their activities.

E. National human right institution

92. The previous system of four ombudsmen has been replaced by one Parliamentary Commissioner for Fundamental Rights (the Ombudsman). Despite the accreditation in 2014 of "A" status for the institution as compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), the amendments to the law and the lack of enforceability of its recommendations have weakened protection in relation to certain rights and the effectiveness of the Ombudsman's mandate.

[38] See the report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Hungary from 1 to 4 July 2014, 16 December 2014.

[39] See Frontline Defenders, "Annual report on human rights defenders at risk in 2016", p. 15.

93. The Special Rapporteur recognizes that the Office of the Ombudsman is active in the conduct of investigations and raising awareness of human rights issues through annual reports and public outreach. Along with the parliament and the President, the Ombudsman can request the Constitutional Court to review laws passed by the parliament, either ex officio or based on complaints submitted by individuals or groups. Unlike before, it may not request the Court to provide an abstract interpretation of the Fundamental Law. Nevertheless, there are concerns that despite its mandate, the Office of the Ombudsman has been reluctant to refer complaints to the Constitutional Court for review in cases that it deems political or institutional.[40]

94. The continuous lack of funding could hamper the independence of the Ombudsman and his capacity to act as a strong and effective mechanism. The Ombudsman was recently also designated as the National Preventative Mechanism, however, the budget of his Office was not adequately increased to cover the greater workload. In order to ensure the credibility and effectiveness of its work, the Government should increase the budget allocated to the Office of the Ombudsman and take measures to ensure adequate follow-up and implementation of its recommendations, lest its functions be perceived as merely restricted to receiving reports and forwarding them to the competent authorities.

95. The Special Rapporteur also recommends that the Ombudsman expand the scope of his activities to provide protection for human rights defenders, as it is inherent in his mandate. Human rights defenders could be considered as a specific group at risk and, as such, could fall within the mandate. This protection could be offered in a number of ways, including through formal complaints mechanisms and protection programmes; advocacy and awareness-raising; public support when violations are committed against defenders; and capacity-building. Protection could also be offered with more specific and direct means, including acting on individual complaints; visiting defenders in detention; and providing legal aid in the context of violations of the rights of defenders.

F. Non-State actors

96. Non-State actors have frequently taken part in the intimidation and stigmatization of or threats against human rights defenders. According to international human rights law, the State is responsible for protecting defenders from detrimental action by non-State actors and for carrying out effective investigations into such cases.

97. The media landscape is increasingly dominated by outlets closely affiliated or loyal to the Government, a phenomenon that has been bolstered since 2010. Media laws allow political interference in the editorial content of public broadcast channels. Freedom of the press has been severely limited by laws that have restricted the opportunity for diversity of service and established a powerful control mechanism to strictly regulate broadcast, print and online media. This concentration of media in the hands of the Government has reduced access to the media by human rights defenders and civil society organizations. As a result, they get little media coverage and few opportunities to raise their concerns, express dissenting views or defend their human rights positions.

98. The Special Rapporteur is also aware of numerous cases of verbal and physical attacks and threats by far-right extremists who harbour ultranationalist views, mainly targeting members or volunteers of organizations dedicated to migrant rights and Roma issues. He also met environmental defenders who pointed to increased criminal defamation litigation by companies, following their actions to protect the right to a safe and healthy

[40] See International Bar Association Human Rights Institute, "Still under threat: the independence of the judiciary and the rule of law in Hungary".

environment. Local media usually portray environmentalists and watchdogs as those who obstruct development.

G. Community of human rights defenders

99. The Special Rapporteur met numerous brave and courageous human rights defenders working on different issues during the course of his visit. Those who help asylum seekers, support Roma communities, defend the rights of women and lesbian, gay, bisexual, transgender and intersex persons, environmentalists, lawyers and social workers. However, apart from some of the bigger organizations, defenders can feel isolated and not sufficiently interconnected. Some NGOs are not sufficiently embedded in society and have not secured sufficient support from the broader society for their work, which can in the longer run weaken their ability to seek solidarity and mobilization.

100. Furthermore, the contraction of available funding has over the years resulted in a greater competition among NGOs, which have become increasingly aware of overlapping projects in the same community with similar objectives and results. In the work of human rights, collaboration is crucial. A single organization will struggle to have sufficient resources or skills to ensure broader social change. It is encouraging to see that the attacks on NGOs have inadvertently caused more interest from the wider society in human rights activism and strengthened civil society cooperation.[41]

101. The Special Rapporteur recommends that civil society in Hungary establish national and local networks of support with shared objectives and reinforce partnerships in fundraising.

102. The lack of access to independent funding is a concern. As the access to European Union funding is channelled through government-controlled agencies, the discontinuation of funding can be used as a tool to silence dissent or encourage self-censorship. The Special Rapporteur urges civil society organizations to establish stronger links to European and international networks in order to gain more support and address the shortage of independent funding.

103. The Special Rapporteur calls for concrete measures to be put in place to prevent governmental agencies from interrupting or misusing European Union funding, or favouring organizations that are closely affiliated to the Government. He urges the European Union to examine carefully the impact of channelling its financial resources through governmental agencies on the weakening of independent civil society organizations in Hungary. It is important to explore alternative ways to fund those organizations directly.

V. Conclusions and recommendations

A. Conclusions

104. **The Special Rapporteur considers that, overall, human rights defenders in Hungary are able to operate safely in Hungary. However, the environment in which they function is increasingly not a conducive one. His visit has revealed that significant challenges stem from the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedoms of opinion and expression, of**

[41] See www.index.hu/belfold/2016/04/20/norveg_civil_alap_tamadasok_okotars_civilek/.

peaceful assembly and of association. Legislation pertaining to national security and migration may also have a restrictive impact on the civil society environment.

105. The Special Rapporteur would like to caution against the use of legislation to overregulate, undermine or obstruct the work of human rights defenders. He emphasizes that in article 2 (2) of the Declaration on Human Rights Defenders and in resolutions of the Human Rights Council and the General Assembly, States are called upon to adopt legislative, administrative and other measures to ensure that the rights and freedoms enshrined in the Declaration are effectively guaranteed. Furthermore, the Special Rapporteur considers it important for the Government to reinforce its efforts in raising public awareness of human rights and fostering a spirit of dialogue and cooperation with civil society.

B. Recommendations

106. In this connection, the Special Rapporteur puts forward the following recommendations to various stakeholders.

107. The Special Rapporteur recommends that the Government:

(a) Ensure full compliance with the international standards related to respect for human rights, democracy and the rule of law by, inter alia, promptly implementing the outstanding recommendations and decisions of international and regional human rights mechanisms and courts;

(b) Review all administrative and legislative provisions that restrict the rights of human rights defenders and ensure that domestic legislation is in line with international human rights law and standards;

(c) Ensure procedural safeguards in the legislative process to provide for a reasonable time for genuine public consultation between policymakers, civil society and other stakeholders;

(d) Mainstream human rights into the institutional and policy framework, including by adopting a national action plan on human rights with clear and specific goals and indicators;

(e) Adopt a zero-tolerance approach, whether by public officials or non-State actors, towards the stigmatization and intimidation of defenders, and ensure they carry out their work in a safe and enabling environment;

(f) Formulate national guidelines on the promotion of human rights defenders and consider establishing a national mechanism to protect them, in consultation with civil society organizations;

(g) Strengthen the role and independence of the Ombudsman and reinforce the financial autonomy of his Office;

(h) Consult the Ombudsman on legislative processes and ensure adequate implementation of his recommendations;

(i) Review the legal provisions related to freedom of information and data protection in order to guarantee free and uncontrolled access to public interest information;

(j) Make registrations of associations simpler, non-onerous and expeditious and adopt a notification procedure;

(k) **Strengthen the judiciary by ensuring it can operate independently and effectively, and allocate budgetary resources to ensure independent legal assistance to human rights defenders;**

(l) **Establish an independent body to safeguard the independence of the judiciary and supervise the appointment, promotion and regulation of the profession in accordance with international human rights standards;**

(m) **Ensure that restrictions on peaceful assembly do not impair the essence of the right to such assembly, are prescribed by law, are proportionate and necessary in a democratic society, and still allow demonstrations to take place within sight and sound of their object and target audience;**

(n) **Provide protection during peaceful assemblies from individuals or groups who aim to disrupt or disperse such assemblies;**

(o) **Reinforce the existing legislation on the protection of whistle-blowers and establish a strong and independent agency with the power to grant legal protection and support for whistle-blowers;**

(p) **Ensure that both public and private actors, including companies, respect the rights of human rights defenders, and investigate instances where non-State actors commit violations against defenders, resulting in the prosecution of those responsible and providing remedy to the survivors.**

108. **The Special Rapporteur recommends that the Ombudsman:**

(a) **Strengthen the scope of his activities by prioritizing and reacting to concerns raised by human rights defenders;**

(b) **Actively engage the Constitutional Court on constitutional complaints, including those that may be considered political or institutional, and proactively follow up on the implementation by the Government of his recommendations.**

109. **The Special Rapporteur recommends that human rights defenders:**

(a) **Become better informed about the Declaration on Human Rights Defenders and publicize it widely in society;**

(b) **Make full use of the human rights mechanisms of the United Nations, the European Union, the Council of Europe and OSCE in connection with human rights monitoring and protection;**

(c) **Develop and strengthen national and local networks aimed at protecting defenders and facilitating coordination.**

110. **The Special Rapporteur recommends that non-State actors, such as political parties, the media, private companies and other groups, refrain from inciting, organizing or participating in harassing, threatening or stigmatizing human rights defenders.**

111. **The Special Rapporteur recommends that public and private media ensure and are provided with unfettered access to the coverage of issues of concern to human rights defenders and civil society, in order to publicize their human rights work.**

112. **The Special Rapporteur recommends that the international community, the European Union, the Council of Europe and OSCE:**

(a) **Continue monitoring the situation of human rights defenders in Hungary and intensify efforts to empower and support them, including through political, legal and financial assistance;**

(b) **Engage with the Government to encourage meaningful dialogue between the Government and civil society, in order to ensure that institution-building, development and other programmes are human rights compliant.**

113. **He also recommends that the European Union review its policy on funding civil society organizations exclusively through the State budget and explore alternative sources and means of funding for independent civil society, with a view to ensuring free and non-politicized access to funding, including small grants, for all civil society organizations.**

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Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights defenders on his visit to Azerbaijan from 14 to 22 September 2016. During his visit, the Special Rapporteur sought to examine the principal question of whether the environment in which human rights defenders operate in Azerbaijan is safe and enabling. In the report he concludes that human rights defenders are increasingly at risk and do not feel safe because of increasingly restrictive legislation, criminalization of their actions and a lack of access to justice. They do not feel empowered owing to stigmatization, intimidation and excessive oversight and scrutiny. The Special Rapporteur puts forward a series of recommendations to all relevant stakeholders, with a view to adopting a corrective course of action and addressing the challenges and risks facing defenders in Azerbaijan.

* The present document was submitted late to reflect the most recent developments.

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Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan**

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** Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the situation of human rights defenders conducted an official visit to Azerbaijan from 14 to 22 September 2016, at the invitation of the Government. The objective of the visit was to assess the situation of human rights defenders in the country in the context of the obligations and commitments of the State under international human rights law and in the light of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). An examination of the legal, institutional and administrative framework in the country for the promotion and protection of human rights was of particular importance to the present review.

2. In the course of his visit, the Special Rapporteur met high-level representatives of the Presidential Administration, State Security Service and the Ministries of Foreign Affairs, Internal Affairs, Taxes, Communication and Justice. He also met senior officials from the Supreme Court, the Office of the Prosecutor-General, the Office of the Commissioner for Human Rights and the State Support Council for Non-governmental Organizations. In addition, he met members of the United Nations country team and United Nations agencies, the Council of Europe and the diplomatic corps.

3. The Special Rapporteur also met a wide range of human rights defenders, lawyers, journalists and representatives of non-governmental organizations (NGOs). He also met human rights defenders in detention, reinforcing his overall impression of the vulnerable situation of civil society in Azerbaijan.

4. The Special Rapporteur thanks the Government of Azerbaijan for extending an invitation to him and for its excellent cooperation throughout the visit, as well as for continued assistance with additional information after the visit. He is grateful to everyone who took the time to meet with him and shared their valuable experiences and insights, as well as those who helped to organize the visit.

II. International, regional and national framework

5. Azerbaijan has gone through significant and rapid changes over the past decades. It has faced many geopolitical challenges. Situated at the crossroads between Eastern Europe and Western Asia, Azerbaijan is divided into 66 districts, 77 cities and 13 urban districts.

6. An unresolved armed conflict in and around the Nagorno-Karabakh region of Azerbaijan has resulted in more than 600,000 internally displaced persons and thousands more refugees. A ceasefire signed in 1994 remains fragile, with reports of frequent violations. In April 2016, heavy fighting broke out in what was seen as the worst episode of violence since the ceasefire. In December 2016, a clash on the international border between Azerbaijan and Armenia to the north of the territory resulted in three deaths. In the meetings the Special Rapporteur held with representatives of the Government and of civil society, interlocutors repeatedly raised the issue of internally displaced persons as one of the main human rights concerns affecting the country.

7. The political system is reported to be increasingly authoritarian, with a high degree of power concentrated in the Presidential Administration.[1] The country's first parliament,

[1] See, for example, Economist Intelligence Unit, Azerbaijan country report, January 2017, p. 3.

the unicameral National Assembly, was elected in 1995 and consists of 125 deputies elected from single-member constituencies.

8. Azerbaijan has experienced a period of sustained economic growth over the past decades, driven by increasing revenues from oil and gas. Thanks to high economic growth in the 2000s, the Government initiated large public sector investment programmes and policies to expand social assistance and increase wages. That helped to reduce poverty substantially and improved the distribution of wealth.

9. Nonetheless, Azerbaijan is reportedly experiencing serious economic and financial challenges, which have been exacerbated by low oil prices and the devaluation of the national currency, the manat. In 2015, more than two thirds of the country's foreign currency reserves were spent to support the exchange rate of the national currency.[1]

10. Corruption is widely perceived to be endemic and deeply institutionalized, "permeating all spheres of public life, with entrenched political patronage networks and widespread conflicts of interest closely connected to the political elite".[2] Azerbaijan ranked 123rd out of the 176 countries assessed on the Transparency International corruption perceptions index for 2016.[4] According to some observers, the Government could face the risk of social unrest and greater public dissatisfaction, owing to a sharp fall in incomes in 2016, large income disparities, a high level of corruption and unaccountable elites.[5]

11. In accordance with article 148 of the constitution of 1995, international human rights treaties ratified by Azerbaijan constitute an integral part of the legislative system.[6] Article 151 holds that, whenever there is disagreement between international agreements and treaties and domestic normative-legal acts (except for the constitution and acts accepted by referendum), the provisions of international agreements take precedence.

12. Azerbaijan is party to eight core international human rights treaties. It has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. In that connection, the Special Rapporteur joins the calls by other United Nations human rights mechanisms in encouraging the State to ratify the remaining treaties.

13. Azerbaijan has ratified all eight core conventions of the International Labour Organization (ILO) that cover four categories of principles and rights: freedom of association and the right to collective bargaining; the elimination of forced labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. It has also ratified the Convention for the Protection of Human Rights and Fundamental Freedoms.

14. As a member of the Council of Europe, its membership is contingent upon respect for a set of common principles, on which the Council is founded. Human rights, democracy and rule of law constitute the three founding pillars of the Council of Europe. Azerbaijan is also a participating State in the Organization for Security and Cooperation in Europe

[1] See www.bloomberg.com/news/articles/2016-09-02/azerbaijan-s-banks-halt-foreign-currency-sales-as-crisis-deepens.

[2] See Transparency International, "The state of corruption: Armenia, Azerbaijan, Georgia, Moldova and Ukraine", July 2015, p. 15.

[4] Available from www.transparency.org/news/feature/corruption_perceptions_index_2016.

[5] See Economist Intelligence Unit, Azerbaijan country report, January 2017, p. 3.

[6] See www.azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf.

(OSCE), which strongly advocates for the human dimension of security and for promotion of full respect for human rights.

15. In line with international human rights law, the primary duty to promote and protect human rights and fundamental freedoms lies with the State. That obligation includes guaranteeing the right of everyone, individually and in association with others, to strive for the protection and realization of human rights. In other words, every person has the right to defend all human rights for all. That is the essence of the Declaration on Human Rights Defenders, which was reinforced by subsequent resolutions of the General Assembly and the Human Rights Council.

16. The Azerbaijani State is therefore under an obligation to take concrete steps to create the necessary conditions, including in the political and legal domains, to ensure that everyone in the country can enjoy and promote all human rights and freedoms in practice. The Special Rapporteur has continuously emphasized that ensuring a safe and enabling environment for human rights defenders is a principal part of that responsibility.[7]

17. The Special Rapporteur's visit therefore focused primarily on assessing some of the key elements of the enabling environment, namely a conducive legal, institutional and administrative framework; access to justice; a strong and independent national human rights institution; effective protection policies and mechanisms, paying attention to groups at risk and applying a gender-sensitive approach; non-State actors that respect and support the work of defenders; and a strong and dynamic community of human rights defenders. In other words, the Special Rapporteur set out to establish if human rights defenders were safe and empowered in Azerbaijan. The subsequent sections will provide more detailed answers to these questions.

III. Civil society environment

18. During his visit, the Special Rapporteur was frequently asked by various interlocutors about the parameters for the definition of human rights defenders under international human rights law. It became evident that the very classification of defenders was increasingly politicized in Azerbaijan.

19. In his discussions, the Special Rapporteur referred to an established broad definition of human rights defenders, which has been enshrined in the Declaration on Human Rights Defenders. He recalled that human rights defenders are those who, individually or with others, act to promote or protect human rights, nationally and internationally, in a peaceful manner.

20. Human rights defenders are members of civil society organizations, journalists, bloggers, whistle-blowers and political activists who advocate, among other things, for the rights to free speech, free assembly and free and fair elections. They are not required to belong to any registered organization to be a human rights defender. They can be ordinary men and women who believe in the universality of human rights and act to defend them. To the United Nations, they are agents of change, safeguarding democracy and ensuring that it remains open, pluralistic and participatory. They defend the principles of the rule of law and good governance. The Special Rapporteur emphasizes that without human rights defenders and without their invaluable contribution, Azerbaijani society would be far less free, less equal and less hopeful.

[7] See, for example, the report by the previous mandate holder focusing on the elements of a safe and enabling environment for human rights defenders, A/HRC/25/55.

21. **In order to depoliticize the discourse on defenders, the Special Rapporteur urges the Government of Azerbaijan, the international community and civil society to refer persistently to the Declaration on Human Rights Defenders. That will help to raise the profile of defenders in the country and strengthen their legitimacy in the wider society.**

A. Legal and institutional framework

22. A new constitution was adopted on 12 November 1995through a referendum and amended in 2009, whereby the presidential term limits were abolished and stability secured for the incumbent President. The same year, the first restrictive amendments to the NGO and grant legislation were adopted, whose compatibility with human rights standards was questioned by the European Commission for Democracy through Law (the Venice Commission).

23. The second constitutional reforms of 29 amendments proposed by the President in July 2016 were approved by a national referendum on 26 September 2016. The Venice Commission issued a preliminary opinion on the amendments, regretting that the National Assembly was not permitted to debate the reforms and the population were not given sufficient time to discuss the draft, which undermined the legitimacy of the reforms.[8] It also criticized the proposed institutional reforms, which would further consolidate power in the hands of the President, allowing him to dissolve the National Assembly and weakening the independence of the judiciary, since the role of parliament in the approval of judges would be reduced.

24. The Special Rapporteur acknowledges that the Government has adopted numerous national strategies, which contribute to the overall strengthening of the rule of law and combating corruption. For example, Azerbaijan developed a national action plan for the period 2016 to 2018 on the promotion of open government, which was the fourth policy document to address corruption. However, the action plan is said to lack clear anti-corruption goals and is not evidence-based.[9]

25. The Azerbaijan national integrity system is characterized by a dominant executive branch and strong law enforcement agencies, which are largely unaccountable due to weak oversight.[10] However, the ability of other State institutions, such as the judiciary and the legislature, to hold the executive to account is said to be seriously limited by the fact that sanctions are not imposed for failure to act on their findings.[11] Important gaps in the legislation remain, including the lack of protection for whistle-blowers, comprehensive conflict of interest regulations and private sector anti-bribery legislation.[12]

26. Government reforms continue to be hindered by the range of other laws and policies that are in place, including those related to the rights to freedom of expression, association and assembly, which have the opposite effect. Despite Government assertions that its actions aim to foster transparency and accountability in the NGO sector, in practice they appear to be limiting the activities of domestic and foreign NGOs.[13] The United Nations

[8] Venice Commission, preliminary opinion No. 864/2016 on the draft modifications to the constitution, 20 September 2016.

[9] See OECD, *Anti-corruption Reforms in Azerbaijan*, September 2016, available from www.oecd.org/corruption/acn/Azerbaijan-Round-4-Monitoring-Report-ENG.pdf.

[10] See Transparency International, *Azerbaijan National Integrity System Assessment*, 2014, p. 10.

[11] Ibid., p. 16.

[12] Ibid., p. 15.

[13] World Bank, *Azerbaijan Systematic Country Diagnostic*, June 2015, p. 65.

human rights mechanisms and the Council of Europe, particularly its Venice Commission and the Commissioner for Human Rights, have been vocal about the deleterious effects of legislative limitations on defenders. Representatives of OSCE have also spoken out on several occasions regarding laws and measures that threatened fundamental freedoms of expression and the media, and free and fair elections.

27. The Special Rapporteur warns against the use of legislation to regulate, undermine or obstruct the work of human rights defenders. He emphasizes that article 2 (2) of the Declaration on Human Rights Defenders calls upon States to adopt legislative, administrative and other steps to ensure that the rights and freedoms enshrined in the Declaration are effectively guaranteed. **He recommends that the Government review and abolish all administrative and legislative provisions that restrict the rights of defenders or obstruct their legitimate activities. National legislation should be brought in line with the State party's obligations under international human rights law.**

B. Situation of human rights defenders

1. Stigmatization

28. The situation of civil society in Azerbaijan has seen serious setbacks since 2009, as the rights to freedom of expression, assembly and association have increasingly been curtailed when exercised in opposition to the Government or its policies.[14] Moreover, high-level government officials have used a strident rhetoric to stigmatize human rights defenders and declare them tools of Western influence bound to undermine the State.

29. In December 2014, the head of the Presidential Administration published an essay, stating that Western-funded NGOs played the role of a "fifth column" in Azerbaijan and made several public statements repeating the accusation. Other key officials made similar statements. Most defenders have been accused of being political opponents, promoting values that run counter to those of their society or culture. They have been denounced as politically or financially motivated actors. During the visit, it became evident that such inflammatory language by senior government officials has had a stigmatizing impact on civil society.

30. The continued stigmatization of defenders, which exposes them to heightened risks and produces a chilling effect on the public perception of them, remains of concern. Describing reputable organizations as paid political activists serves no legitimate purpose. The Special Rapporteur urges the Government to refrain from stigmatizing human rights defenders and to respect the legitimate role of civil society in the promotion of human rights and the rule of law in Azerbaijan.

31. The Government is encouraged to support the work of independent civil society organizations, despite disagreements or criticisms, bearing in mind their invaluable role in advancing Azerbaijani society. The Special Rapporteur urges the Government to undertake activities to raise awareness of human rights among the public and foster a spirit of dialogue and cooperation in society.

2. Criminalization

32. During the visit, the Special Rapporteur received many reports and testimonies pointing to the intensified crackdown on and criminalization of civil society in Azerbaijan. In that context, the authorities have targeted defenders, journalists, lawyers and grassroots

[14] Human Rights Watch, *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, 2013.

activists through the use of politically motivated criminal prosecutions, arrests, imprisonment and travel bans. They have also used detention to intimidate political and social media activists on what often seem to be spurious misdemeanour charges of resisting police orders or petty hooliganism.

33. In 2015, the Committee against Torture expressed deep concern that human rights defenders had been arbitrarily deprived of their liberty, subjected to ill-treatment and, in some cases, denied adequate medical treatment in retaliation for their professional activities (see CAT/C/AZE/CO/4, para. 10). At the conclusion of its visit in May 2016, the Working Group on arbitrary detention stated that defenders continued to be detained under criminal or administrative charges as a way to impair the exercise of their basic human rights and fundamental freedoms and to silence them. Those practices constituted an abuse of authority and violated the rule of law that Azerbaijan had agreed to comply with.[15] The Working Group also referred to the large number of cases of detainees who were exposed to violence, torture and ill-treatment. When he visited detained defenders during his visit, the Special Rapporteur could attest to the vulnerability of their physical integrity owing to the continued reports of violence in the context of detention in the country.

34. The Special Rapporteur, jointly with other mandate holders, has issued a number of public statements, urging the authorities to put an end immediately to all forms of persecution of human rights activists in the country. At the session of the Human Rights Council, held in June 2015, a group of 25 States endorsed an oral statement on the situation of human rights in Azerbaijan, raising concerns about the shrinking space for civil society and the imprisonment of independent voices, in particular defenders, and calling for their immediate and unconditional release.[16]

35. The punitive approach to criminalize defenders is said to include a number of the following elements: applying politically motivated charges (inciting hatred, mass disorder and treason); resorting to fabricated charges (possession of drugs and weapons, hooliganism and embezzlement); and using special charges (illegal business activity, tax evasion, and abuse of office) to target primarily the heads of prominent NGOs in Azerbaijan and curtail the ability of NGOs to operate.[17]

36. It is alarming that the maximum term of imprisonment under the code of administrative offences for misdemeanours, with which defenders are often charged (for example, hooliganism, resisting police and traffic violations), has been increased from 15 to 90 days. It is now equal to the minimum term of detention under the criminal code. The Human Rights Committee has held that such severity of punishment may amount to de facto criminal sanction (see CCPR/C/AZE/CO/4, para. 20). Furthermore, in practice, administrative trials that result in such sentences are reportedly perfunctory, with defendants having limited access to independent counsel. Judges tend to decide on periods of detention based almost exclusively on police testimonies. The widespread nature of this type of criminalization could be seen in the documenting of at least 30 cases by civil society, in which the authorities used administrative law offences to jail human rights activists in 2016.[18]

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[15] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E#sthash.SqmbciYf.dpuf.

[16] Available from www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/humanrights/HRC29---JC-human-rights-in-Azerbaijan.pdf.

[17] Freedom Now and Human Rights House Network, "Breaking point in Azerbaijan", May 2015.

[18] See Human Rights Watch, "Harassed, imprisoned, exiled: Azerbaijan's continuing crackdown on government critics, lawyers and civil society", October 2016.

37. The gravity of the arbitrary detention of defenders in Azerbaijan is illustrated through the continuous efforts by civil society to monitor and document how many political prisoners are in detention at a given time. Various lists of political prisoners are updated regularly to inform the debate about the exact number of political prisoners in the country.[19] In fact, during their visits, both the Special Rapporteur and the Working Group on arbitrary detention received various lists of a large number of defenders, journalists and political and religious leaders who were detained on a broad range of politically motivated charges (drugs- and arms-related offences, hooliganism, resisting police, tax evasion, etc.) during their visits.

38. In late 2015 and early 2016, the Government conditionally released or pardoned a number of human rights defenders. However, none of those released had their convictions vacated and several still face travel restrictions. The Special Rapporteur shares the view of the Working Group on arbitrary detention that the pardon did not lead to any significant change in the country regarding other persons deprived of their liberty. Furthermore, even as some activists and journalists were released, the authorities regrettably arrested many others on spurious criminal and administrative charges to prevent them from carrying out their legitimate work.[20]

39. The Special Rapporteur is deeply concerned about the intimidation facing the families and relatives of defenders who carry out their activism from abroad, which in some cases has involved criminal charges being brought against those relatives. The Special Rapporteur calls on the Government to refrain from criminalizing the important work of human rights defenders and immediately review the cases of defenders and their relatives deprived of their liberty, with a view to releasing them unconditionally.

3. Freedom of expression

40. Despite a national law guaranteeing freedom of speech, Azerbaijan has continued to face challenges in enabling the realization of freedom of expression and the media. Independent media outlets have been frequently targeted. Their licences have often been withdrawn for the expression of critical views. Under the law on mass media, online media outlets can be shut down for committing defamation twice in one year.

41. In December 2014, the Government suspended the activity of *Radio Azadliq* in the context of a broader criminal persecution of civil society. *Meydan TV* was forced to terminate its broadcast in the same month. Its editor and director both had to flee abroad, many of its journalists are banned from travelling abroad and their bank accounts are still frozen. In July 2016, the offices of *ANS TV and Radio* were closed as part of an investigation related to their coverage of the situation of the attempted coup d'état in Turkey.

42. The Special Rapporteur received reports of severe pressure being put on independent newspapers, including, for example, the closure of *Khural* and *Zerkalo* newspapers. Journalists and bloggers have been arrested on fabricated charges. Seymur Hazi, a reporter on the *Azadliq* newspaper and a leading anchor for television channel *Azerbaycan Saati*, was arrested in August 2014 and imprisoned for five years on the fabricated charge of hooliganism. In August 2016, Faiq Amirov, financial director of the same newspaper, was placed in pretrial detention for storing and spreading books and electronic data related to Fethullah Gülen. His detention led to the newspaper's financial accounts being frozen. Khadija Ismayilova was regularly intimidated for her investigative journalism, until

[19] See Working Group on a Unified List of Political Prisoners in Azerbaijan, "A unified list of political prisoners in Azerbaijan", November 2016.

[20] See Human Rights Watch, "Harassed, imprisoned, exiled".

September 2015, when she was charged with embezzlement and tax evasion and sentenced to seven and half years in prison. She was released in May 2016 on probation and banned from travelling abroad for five years. During his visit, the Special Rapporteur was informed of at least 20 journalists and bloggers who had been sanctioned in some way by the authorities.

43. In addition, some NGOs working on the protection of freedom of expression have been investigated or closed down. For example, the Media Rights Institute and the Institute for Reporters' Freedom and Safety were effectively closed. Not only were the leaders of those organizations affected by the ongoing investigations and their bank accounts frozen for several years, but this also happened to their former employees. The closure of these NGOs has created a gap in the protection of freedom of expression and defence of the rights of journalists.

44. The authorities also use administrative detention to intimidate journalists and social media activists on spurious misdemeanour charges. As a result, continued harassment has encouraged self-censorship by even the most outspoken activists, minimizing both the quality and quantity of advocacy and journalism in the country.[21]

45. In addition, the authorities reportedly put pressure on private companies to discourage them from advertising with critical and independent newspapers and media outlets, which has weakened their financial sustainability and curtailed their activities.

46. In Azerbaijan, defamation remains a criminal offence, which can lead to up to three years' imprisonment. Smearing the honour of the President is punishable by up to two years in prison, or five years if joined with other accusations of criminality. In 2013, the defamation laws were amended to include Internet content. More recently, in November 2016, the National Assembly approved amendments proposed by the Prosecutor General to the criminal code. The amendments included the addition of article 148 (1) (posting slander or insult on an Internet information resource by using fake user names, profiles or accounts), punishable by imprisonment for up to one year, and the extension of article 323 (1) (smearing or humiliating the honour and dignity of the President in public statements, publicly shown products, or the mass media) to online activities through the use of fake user names, profiles or accounts, punishable by up to three years' imprisonment.[22]

47. The Special Rapporteur acknowledges the broad access to the Internet in Azerbaijan, including the growing use of social media. However, there are increased reports of intimidation and retaliation for views expressed on the Internet, including the imposition of criminal charges in relation to critical opinions. For example, Mehman Huseynov, a human rights blogger, was briefly detained and released in June 2012, but the investigation against him is still open. He is banned from travelling abroad and his identity card has been confiscated. Fuad Gahramanli, a prisoner of conscience, was arrested in December 2015 after posting on Facebook an appeal for people to protect their rights, which led to a criminal charge for making public appeals against the State and inciting national and religious hatred.

4. Freedom of information

48. Overall, legislation on access to information is well developed in Azerbaijan. However, broad exceptions to the right of access and a lack of sanctions for violations

[21] See United States Agency for International Development (USAID), *The 2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, p. 38.

[22] See report of the Institute for Reporters' Freedom and Safety, available from www.irfs.org/news-feed/azerbaijani-parliament-approves-bill-restricting-online-speech/.

appear to weaken the implementation of those legislative guarantees. The usual approach by authorities to requests for information is that of refusal or inadequate response. Further shortcomings in implementation have included the requirement to provide personal details in order to receive the information needed; disregarded time frames; and inconsistent interpretation of the meaning and scope of what constitutes public information throughout government agencies.[23]

49. Defenders are therefore obliged to challenge refusal of freedom of information requests through the courts, which often support the position of the authorities. Despite the requirement to appoint a special ombudsperson on freedom of information, as stipulated by the relevant legislation, the existing Commissioner for Human Rights has assumed that role. However, it emerged during discussions with civil society that even though the law provides the Commissioner with a mandate for oversight of the way in which the Government provides access to information, in practice, her office has yet to implement its functions effectively in the area of freedom of information.

50. Furthermore, the legislative amendments in June 2013 made it impossible to obtain information on the ownership of companies and broadcasters, which became a commercial secret. This has hindered not only the work of investigative journalists and anti-corruption NGOs but also the overall efforts of the Government to promote transparency and combat corruption. The argument used for the amendment, namely that previously free information was frequently abused or used to blackmail individuals is not convincing. There are other legislative and policy tools at the disposal of the authorities to protect individuals from blackmail, without severely restricting the scope of freedom of public interest information.

51. **The Special Rapporteur recommends that the Government effectively enforce proactive publication of information, publish public interest data in open format on the Internet, limit the exemptions to freedom of information requests and provide for a proportionality test to grant wider access to information.**

52. **The Special Rapporteur urges the Government to repeal and review legislation that limits or sanctions the exercise of freedom of expression and opinion, both online and offline. The Government is further urged to refrain from taking retaliatory or criminalizing measures in relation to free expression.**

5. Freedom of association

53. The Special Rapporteur was struck to observe the drastic impediments to the right to freedom of association caused by the legislative amendments to laws regulating civil society operations adopted between 2013 and 2015. The already challenging environment for NGOs has turned into a total crisis.

54. Despite Government assertions that the legislation does not prevent NGO activities without State registration, it is clear that NGOs are effectively prevented from operating without registration because they cannot open a bank account, obtain legal entity status or receive foreign funding. Furthermore, NGOs have to register every change to founding papers or factual prerequisites (change of address or phone) and obtain an extract of the registration certificate to continue their work. Any failure to comply with this onerous requirement is sanctioned through administrative liability.

55. Foreign NGOs risk liability for operating local branches without State registration. They are required to enter into an agreement of a limited duration with the Government and seek formal approval of their compliance with such vague criteria as respect for the national

[23] See OECD, *Anti-Corruption Reforms in Azerbaijan*, p. 8.

and moral values of the Azerbaijani nation. Any failure to comply with this requirement results in heavy financial penalties.

56. The new rules have granted broad discretion to the Government, which has led to an increasing number of organizations either being denied or operating without registration, facing possible criminal prosecution later as a result.

57. Access to funding has been severely curtailed as a result of the legislative amendments. Since then, both donor organizations and donor recipients are required to obtain approval from the authorities before funded activity can be implemented. In effect, there is a complicated three-step procedure for a grant to be made accessible: (a) a donor organization must obtain permission to provide grants; (b) NGOs must register grant agreements; and (c) NGOs must register each service agreement signed with any foreign organization, company or individual before it is implemented. Furthermore, the new NGO laws have increased administrative penalties for NGOs and allowed the suspension of their activities for one year for non-compliance with the regulations.

58. The heavy caseload of targeted organizations points to the large-scale persecution of domestic and international NGOs in Azerbaijan since 2014. Dozens have had their bank accounts and those of their leaders seized; employees have been repeatedly interrogated; tax inspections of NGO financial activities have been carried out, with heavy penalties as a result; there have been degrading and discriminatory physical checks of NGO staff at border crossing points; and many NGOs have been closed down.

59. Numerous employees of the NGOs affected have been banned from travelling abroad and their bank accounts frozen. Prominent NGO leaders have been arrested, convicted or exiled abroad. In October 2016, the European Court of Human Rights is said to have received complaints from 25 Azerbaijani NGOs in connection with the violation of freedom of association. The complaints are related to the refusal of the Government to register NGOs, under the pretext of deficiencies in the founding documents, repeatedly returning the documents and failing to investigate their complaints.[24] The Court has issued six decisions on violations of freedom of association in Azerbaijan. Four of them are connected to refusal to register NGOs and two to cancellation of registration.

60. **The Special Rapporteur urges the Government to cease its punitive approach to NGOs and refrain from committing widespread violations of the right to freedom of association. The Government should instead embrace a more supportive approach to civil society, even if those organizations may be critical of the Government.**

6. Freedom of peaceful assembly

61. The right to peaceful assembly is protected under international human rights law and the constitution. Through assembly, human rights defenders can mobilize the population and encourage social dialogue on critical issues.

62. The authorities have placed limitations on the right to peaceful protest by regulating it in a broad range of circumstances. Requests for public assemblies, especially by critical elements of civil society or in the regions, have reportedly been usually denied, delayed or approved in areas that are remote or unconducive to public meetings. There are frequent reports of the use of force against peaceful protests and arrests of demonstrators.

63. The widespread detention of defenders in the context of peaceful assemblies is of great concern. It effectively prevents the exercise by human rights defenders of their right to free peaceful assembly and expression. The authorities have also used administrative

[24] See www.contact.az/docs/2016/Social/103100173458en.htm?7#.WJAdQbYrLBI.

detention against those involved in organizing, participating in, or vocally showing support for public protests, for example in the context of the recent constitutional referendum. Officials have also targeted several political activists who had criticized the country's economic deterioration at the time when protests linked to economic concerns were taking place in several different cities between December 2015 and February 2016.[25]

64. Private enterprises, including hotel and conference businesses, are concerned about retaliation from the Government and refuse to allow opposition activists to hold meetings in their premises.

65. During the visit, the Special Rapporteur learned of the so-called "preventive measures", whereby organizers of and participants in public rallies are interviewed or temporarily arrested prior to the event. As the visit took place a week before the referendum in September 2016, he was alerted to the limitations placed on the attempts by numerous groups to assemble in public spaces in opposition to the proposed amendments to the constitution. In that regard, he sought clarification from the Government on a list of 45 individuals and human rights defenders, who were allegedly targeted through warnings, arrests and detention prior to the peaceful assemblies on 17 September 2016. The Government replied that only 13 out of 45 persons were arrested for committing administrative offences, such as hooliganism and resisting the police. The information provided confirms the overall pattern adopted by the authorities of using such charges to prevent defenders from peaceful assembly or in retaliation for their legitimate activities.

66. It is hard to believe that the predominant majority of Azerbaijani defenders are hooligans and aggressors. Given the experience gained during the visit, it is more likely that such charges are used as a political tool to intimidate and criminalize peaceful human rights defenders. Furthermore, the clarification received from the Government in response to the Special Rapporteur provided insufficient explanation to meaningfully elucidate the pattern of criminalization of those who were involved in recent public protests, including the wide use of charges on administrative offences leading to detention for up to 90 days.

67. **The Special Rapporteur urges the Government to ensure that restrictions to peaceful assembly do not impair the essence of the right to such assembly, are prescribed by law, are proportionate and necessary in a democratic society and still allow demonstrations to take place within sight and sound of its object and target audience.**

7. Right to participate in public affairs

68. According to the International Covenant on Civil and Political Rights (art. 25 (a)) and the Declaration on Human Rights Defenders (art. 8), everyone has a right to participate in public affairs and, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs. The Human Rights Committee has also interpreted the right to participation in public affairs, as including a specific right to participate in constitution-making.[26]

69. The Special Rapporteur therefore emphasizes that human rights defenders in Azerbaijan are fully entitled to participate in the conduct of political and social affairs of the country. They have a legitimate right to express their views, online and offline, on

[25] See Human Rights Watch, "Harassed, imprisoned, exiled", p. 2.

[26] See Human Rights Committee, general comment No. 25 (1996) on participation in public affairs and the right to vote.

proposed legal amendments, participate in constitutional reforms, engage in a dialogue with authorities, or peacefully protest against Government policies or actions.

70. It should be noted that in 2007, the Government established the Council on State Support to Non-governmental Organizations to provide State financial support to NGOs and facilitate cooperation with civil society. Registered NGOs can approach the Council to receive funds. However, the perception among independent civil society organizations is that the Council gives preference to organizations loyal to the Government.[27]

71. Furthermore, the law on public participation of 2014, which stipulates the participation of NGOs in the public councils that should be created to monitor the work of central and local state administrations, is said to present the potential to foster policy dialogue. However, NGOs have voiced concerns about the failure to implement the law and that independent organizations would not be welcomed in such councils, even when they are established.[28]

72. In 2006, on the initiative of the Council of Europe, the Government established a joint working group on human rights issues, composed of representatives of human rights organizations and authorities. Nonetheless, in October 2015, the Secretary General of the Council withdrew from the working group, pointing to the dramatic deterioration of the overall situation of human rights defenders in the country.

73. The Special Rapporteur notes with regret that the scope and quality of dialogue between civil society and government officials have been steadily deteriorating. The authorities are said to display a general lack of interest in such dialogue, especially when it entails an open and frank debate of dissenting views and when it involves independent NGOs and human rights defenders. This has led to an instinctive suspicion of dialogue among the authorities, or their overt resistance to engagement with civil society.

74. **The Special Rapporteur encourages the Government to build bridges with civil society organizations and to establish a regular and meaningful dialogue with human rights defenders, ensuring broad and inclusive participation. Such continuous dialogue and partnership is ultimately in the long-term interest of the Government of Azerbaijan.**

C. Specific groups of human rights defenders at risk

75. Besides the overall context of stigmatization and increasingly limited space for civil society in Azerbaijan, some defenders are at particular risk, especially human rights lawyers, journalists and whistle-blowers. They face multiple and aggravated forms of discrimination, as well as visible and invisible forms of violence that prevent them from carrying out their work in a safe and enabling environment.

76. In the context of continued challenges regarding gender equality in the country and the overall stigmatization of civil society, the Special Rapporteur underlines the importance of applying a gender-sensitive perspective in the protection and promotion of human rights defenders. Women human rights defenders can find themselves exposed to particular risks. The Special Rapporteur notes the concern expressed by the Human Rights Committee about patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in society and about the severe restrictions imposed on women and girls with a view to preserving the so-called family honour (see CCPR/C/AZE/CO/4, para.14). He also recalls the concerns of the Committee on the

[27] World Bank, *Azerbaijan Systematic Country Diagnostic*, p. 65.

[28] USAID, *The 2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, p. 38.

Elimination of Discrimination against Women about restrictions on the work of women human rights defenders, including some cases of arrest and detention (see CEDAW/C/AZE/CO/5, para. 16).

77. The Special Rapporteur heard testimonies that journalists and individuals who report corruption or other abuses of authority through official channels have faced retaliation from the perpetrators they have accused. Whistle-blowers play a vital role in exposing corruption, fraud and mismanagement, and in preventing disasters that arise from negligence or wrongdoing. However, there is little protection granted to them. Most have been subject to harassment and retaliation, including loss of employment and being blacklisted for future employment. This has sent a chilling message, which will deter others from denouncing corruption or misconduct by public officials.

78. It is important to protect whistle-blowers and journalistic sources against discrimination and retaliation, as well as ensuring a safe space for individuals to speak out about corruption and other forms of wrongdoing. Failure to ensure such protection can also have a chilling effect on journalists and civil society in their role as public watchdogs. **The Special Rapporteur calls for the adoption of a law that will include a broad definition of whistle-blowing, which would apply to both public and private employees and would grant protection from all forms of retaliation or discrimination. He further recommends the establishment of a strong and independent national agency, which would have the power to grant legal protection and support whistle-blowers.**

79. Despite the obligations of the State to guarantee that lawyers can discharge their professional functions and protect their rights, human rights lawyers increasingly face challenges through a number of means, including criminal prosecutions, searches, disciplinary action, freezing of assets and other administrative measures. The well-known cases of Intigam Aliyev, Aslan Ismayilov and Alaif Hasanov demonstrate the intimidation of independent lawyers through detention and lawsuits.

80. For those lawyers who are members of the Bar Association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities.[29] During the visit, the Special Rapporteur raised with the Bar Association and the judiciary the cases of several lawyers whose disbarment and sanctioning were unjustified and politically motivated. The politicization of the actions taken by the Bar Association takes place in the context of its gross institutional weaknesses, which raises serious questions about its legitimacy and puts the ability of the body to regulate the profession effectively in severe doubt. The Special Rapporteur considers that disbarments of human rights lawyers, together with criminal prosecutions, searches and freezing of their assets are part of the broader intimidation facing human rights defenders in the country.

D. Access to justice

81. The judiciary is structured as a three-tiered court system consisting of trial courts of general and special jurisdiction, appellate courts, the Supreme Court and the Constitutional Court. The Supreme Court is the highest judicial body on civil, criminal, administrative and other cases directed to general and specialized law courts. Judges of the Supreme Court are appointed by the parliament on the recommendation of the President. The Constitutional Court is appointed in the same manner and has a special jurisdiction to review the compatibility of legislation, executive decrees and court decisions with constitutional requirements.

[29] International Commission of Jurists, "Defenceless defenders: systemic problems in the legal profession of Azerbaijan", November 2016.

82. A key element of judicial independence is the institutional independence of the judiciary from the executive and legislative branches of Government.[30] According to the Government, the independence of judges in Azerbaijan is ensured by their "non-politicization, non-removability, and immunity during the term in power, by limiting their discharge from position and termination of powers, by independent functioning of the judiciary and administration of justice being conducted in accordance with the procedure envisaged by law, by not allowing any persons to limit or interfere with court proceedings, by protecting [the] personal security of judges and providing them with financial and social guarantees appropriate to their positions".[31]

83. The Government also notes a number of reforms aimed at making the courts more accessible and increasing their efficiency. Provisions on the independence of judges have been introduced into the codes of criminal procedure and civil procedure. A legal academy has been established and the judicial infrastructure has been renovated and upgraded.

84. In spite of Government assertions about the reforms that have been undertaken, the judiciary still lacks independence from the executive branch of the State, including the prosecuting and law enforcement authorities. In its latest review of Azerbaijan, the Committee against Torture remained concerned at the lack of independence of the judiciary vis-à-vis the executive branch and its susceptibility to political pressure (see CAT/C/AZE/CO/4, para. 14). Civil society organizations lament that courts lack the capacity and independence to uphold the rule of law in the country[32] and that the judicial system suffers from corruption, inefficiency and understaffing.[33]

85. The judiciary is governed by the Judicial-Legal Council, which was established in 2005 by the parliament. It is chaired by the Minister of Justice and composed of representatives of high-level prosecutorial and law enforcement bodies. The Human Rights Committee has raised concerns that the Council, with its excessive powers in matters related to the appointment, promotion and disciplining of judges, is susceptible to undue interference by the executive branch (see CCPR/C/AZE/CO/4, para. 26). Civil society research also indicates the close involvement of the Ministry of Justice in many aspects of judicial governance, in particular the Council.[34]

86. **To grant civil society representatives membership of the Council, or at least a right to observe meetings, could reinforce the independence and transparency of Council. The Special Rapporteur calls for the reform of the composition and functioning of the Judicial-Legal Council to bring it into compliance with international legal standards, including by relieving the Ministry of Justice of the presiding function and excluding prosecutors and other law enforcement bodies.**

87. During the visit, governmental and judicial interlocutors denied that the lack of independence of the judiciary had an impact on the situation of human rights defenders in Azerbaijan. That is despite voluminous testimonies that the Special Rapporteur received from individual defenders and lawyers expressing their frustration that not only could they

[30] See International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, 2007.

[31] Information submitted by the Government to the Special Rapporteur, 16 November 2016.

[32] Human Rights House Network, contribution to the list of issues for the fourth periodic report of Azerbaijan to the Human Rights Committee, "NGO report on civil and political rights in Azerbaijan", December 2015, p. 22.

[33] Civil Rights Defenders, country report on human rights in Azerbaijan, 5 April 2016, available from www.civilrightsdefenders.org/country-reports/human-rights-in-azerbaijan-2/.

[34] See International Bar Association Human Rights Institute, "Azerbaijan: freedom of expression on trial", April 2014.

not rely on the judiciary to check the executive power, but they were also at the receiving end of biased and hostile treatment from the courts for their critical views of the Government.

88. Reports by international observers have also documented how criminal law was misused in trials related to freedom of expression, or how fair trial safeguards were regularly disregarded in so-called political cases. In such circumstances, a criminal trial appears to be a foregone conclusion. The data from civil society show that around 99 per cent of defendants in criminal cases are convicted.[15] Furthermore, judges often concur with the motions of the prosecution or approve trial transcripts that contradict the actual course of proceedings.[16]

89. **As weaknesses in the judicial system and flaws in the legal framework deprive human rights defenders of adequate access to justice, the Special Rapporteur urges the Government to implement recommendations by treaty bodies and the Venice Commission to ensure the judiciary can operate independently and effectively.**

90. Access to legal advice is an essential part of the right to a fair trial, as enshrined in article 14 of the International Covenant on Civil and Political Rights and article 62 of the Constitution of Azerbaijan. However, it is reported that legislative guarantees have not been sufficient for ensuring access to justice in the country, especially given that there are fewer than 10 defence lawyers who are willing and qualified to undertake human rights-related cases, despite being under threat of persecution and harassment from the authorities.[17] **The Special Rapporteur encourages the Government to allocate budgetary resources to ensure access to independent legal assistance for human rights defenders in order to obtain effective access to justice.**

E. National human rights institution

91. The Commissioner for Human Rights is elected by qualified majority vote of the National Assembly from among three candidates nominated by the President. The Commissioner is competent to examine complaints by individuals and NGOs of alleged violations of human rights committed by the Government and her office reported receiving 15,320 complaints in 2015, an increase of 16.5 per cent over 2014. The Commissioner can also request the Constitutional Court to review the cases of human rights violations by legislative acts in force, normative acts of the executive or of municipalities, or court decisions.

92. The Special Rapporteur recognizes the Commissioner's role in the conduct of investigations into human rights violations and the raising of awareness of human rights through annual reports and public outreach. However, some civil society organizations have raised concerns about the Commissioner's lack of criticism of the government policies that have been detrimental to the work of human rights defenders.[18]

93. The Commissioner has also been designated as the national preventative mechanism. However, the Human Rights Committee recently raised concerns about the limited

[15] According to the Echo News Agency, in Azerbaijan, fewer than 1 per cent of defendants obtain an acquittal, see www.echo.az/article.php?article_php?aid=70879.

[16] International Bar Association Human Rights Institute, "Azerbaijan: freedom of expression on trial".

[17] See International Bar Association Human Rights Institute, report to the Human Rights Committee, Azerbaijan country report task force, 7-31 March 2016.

[18] See NGO submission to the Human Rights Committee, 18 December 2015, available from tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCO%2fAZE%2f22557&Lang=en.

effectiveness in preventing torture and ill-treatment and other violations in places of deprivation of liberty of the Commissioner, especially in the context of consistent reports of torture and ill-treatment of human rights defenders and other civil society activists (see CCPR/C/AZE/CO/4, para. 18). In order to ensure the credibility and effectiveness of its work, budget allocations to the Office of the Commissioner should be increased and the Government need to take measures to ensure adequate follow-up and implementation of the Commissioner's recommendations, lest her functions be perceived as merely restricted to receiving reports and forwarding them to the competent authorities.

94. **The Special Rapporteur also recommends that the Commissioner expand the scope of her activities to provide protection and promotion for human rights defenders and appoint a focal point on human rights defenders.** Defenders could be considered as a specific group at risk and, as such, could fall within the mandate. Protection could be offered in a number of ways, including through formal complaints mechanisms and protection programmes; constitutional review of unlawful legal provisions, advocacy and awareness-raising; offering public support when violations are committed against defenders; and capacity-building. Protection could also be offered through more specific and direct means, including acting on individual complaints, visiting defenders in detention and providing legal aid in the context of violations of the rights of defenders.

F. Protection policy for human rights defenders

95. In Azerbaijan, there are no specific policies or mechanism to protect human rights defenders from attacks, threats or harassment. During his visit, the Special Rapporteur heard concerns that human rights activism has been projected to be a "political business" and NGOs are often perceived and labelled as fifth column entities by government officials, leading to further delegitimization of critical views and voices. Senior government officials have described NGOs as paid political activists who are trying to help foreign interests, which has encouraged other authorities to target human rights organizations through various administrative and criminal sanctions.

96. **The Special Rapporteur urges the Government to distinguish between a political debate among political parties and a social dialogue with civil society pertaining to the promotion of human rights, and to refrain from conflating the two discourses, which is contributing to delegitimizing independent organizations, stifling critical views and aggravating the risks facing defenders.**

97. **In recent years, several States have developed national mechanisms to protect human rights defenders through adopting laws and policies in broad consultation with civil society. The Special Rapporteur recommends that the Government consider adopting national guidelines on the protection and promotion of human rights defenders, followed by a concrete action plan to strengthen the environment in which they operate. The Special Rapporteur remains available to the Government for any advisory assistance it may require in this connection.**

G. Community of human rights defenders

98. The Special Rapporteur met with numerous brave and courageous human rights defenders working on different issues during the course of the visit. Those who help migrants and internally displaced persons, defend the rights of women, the lesbian, gay, bisexual, transgender and intersex communities, environmentalists, lawyers, journalists, bloggers, trade unionists and social workers.

99. It appears that some grass-root movements or human rights defenders are portrayed as being closely affiliated with the political opposition. Political activism should not by default undermine the human rights credentials of organizations, especially if their activism is directed at promoting human rights in the country on a non-discriminatory basis. Political activism and human rights activism may well be distinct in their objectives, but they are not always mutually exclusive or contradictory.

100. One can be a political dissident and a human rights defender at the same time, or a former politician and a current advocate for the rule of law, or a parliamentarian and a defender of women's rights. What makes a person a human rights defender is the commonality of purpose, which is the full realization of all human rights for all. The Declaration on Human Rights Defenders is a good starting point to explore the nature of human rights activism.[39]

101. **Human rights defenders should seek to work across sectors to secure a broad basis of solidarity and support in society. The dwindling access to independent funding is a serious concern. The Special Rapporteur encourages international donors to continue exploring ways and means to ensure sustainable funds to human rights defenders and NGOs in the context of the shrinking civil society space in Azerbaijan.**

IV. International and regional cooperation

102. The Special Rapporteur has reviewed numerous reports and documents of the United Nations human rights mechanisms,[40] the universal periodic review of Azerbaijan[41] and the United Nations High Commissioner for Human Rights.[42] He has also assessed reports by OSCE,[43] and the Council of Europe, including its Parliamentary Assembly,[44] the European Court of Human Rights,[45] the Venice Commission[46] and the Commissioner for Human Rights.[47] For example, the Commissioner for Human Rights of the Council has published a number of country reports and third-party interventions on the cases of individual defenders, in which he has emphasized that judicial harassment and retaliatory measures against human rights defenders and their lawyers continue to characterize the response of the authorities to those who express critical opinions and cooperate with international organizations to expose human rights violations in the country.[48] What is striking is that all

[39] See, for example, Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011.

[40] Available from www.ohchr.org/EN/Countries/ENACARegion/Pages/AZIndex.aspx.

[41] Available from www.upr-info.org/en/review/Azerbaijan.

[42] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E.

[43] See www.osce.org/fom/130076.

[44] See assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5680&cat=8 and assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21953&lang=en.

[45] See www.echr.coe.int/Documents/CP_Azerbaijan_ENG.pdf.

[46] See www.venice.coe.int/webforms/documents/?country=41&year=all.

[47] See www.coe.int/en/web/commissioner/country-monitoring-azerbaijan.

[48] See, for example, wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2016)42&Language=lanEnglish&Ver=original; rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2016)40; www.coe.int/en/web/commissioner/-/azerbaijan-an-area-of-darkness; rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2015)8; rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2

the mechanisms mentioned point to the same assessment of the worsening situation of human rights defenders in Azerbaijan. They provide a good number of recommendations addressed to the Government, urging it to remedy violations of the rights of individual human rights defenders, alleviate the administrative and judicial burden placed on them, facilitate access to international funding and recognize the positive role played by civil society organizations.

103. The Special Rapporteur acknowledges that human rights defenders see the European Court of Human Rights as the ultimate neutral arbitrator on their appeals, when they are generally rejected in the domestic courts, which are not perceived as sufficiently independent. It is regrettable that the rulings of the Court are not executed by Azerbaijan, especially in cases related to human rights defenders (for example, Ilgar Mammadov). That is despite numerous calls for implementation made by the Committee of Ministers of the Council of Europe and other regional and international organizations.

104. In the same vein, most, if not all, recommendations made by the international and regional mechanisms have yet to be implemented. Many observers have started questioning the political will of the Government to fulfil its international commitments and conform to binding obligations under international and regional human rights laws.

105. In April 2016, the Extractive Industries Transparency Initiative made an unprecedented decision to downgrade the standing of Azerbaijan from "compliant" to "candidate" country. On 26 October 2016, the Board of the Initiative considered the second validation report, which evaluated the country's progress on civil society engagement as "inadequate". While acknowledging the recent plans to for reforms towards more transparency, the Board pointed to the insufficient space for civil society to operate freely and cautioned about the "challenges related to civil society engagement, which limits the potential for the EITI to contribute to a greater public understanding of revenues and to encourage high standards of transparency and accountability".[49]

106. **The Board of the Extractive Industries Transparency Initiative will review progress in addressing these corrective actions in a third validation in July 2017. In that context, the Special Rapporteur encourages the Initiative to continue paying close attention to the situation of human rights defenders and civil society engagement in the broadest sense possible, given that transparency and accountability in the extractive industry in Azerbaijan depend on a safe and enabling environment for a wide range of individuals and groups of defenders, including journalists, bloggers, whistle-blowers and lawyers, who directly or indirectly contribute to the promotion of the rule of law and human rights in the country.**

107. Likewise, in May 2016, the Steering Committee of the Open Government Partnership, a multilateral initiative aimed at securing concrete government commitments to strengthen transparency and governance, voted to designate Azerbaijan as "inactive", suspending the country temporarily due to "unresolved constraints on the operating environment for non-governmental organizations". The decision was triggered after a number of civil society organizations had written to the Open Government Partnership to

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rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806da609rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2014)10; and
rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?coeReference=CommDH(2013)14.

[49] Extractive Industries Transparency Initiative Board decision on the validation of Azerbaijan, available from https://eiti.org/validation/azerbaijan/2016.

the effect that "the climate for civil society in Azerbaijan has deteriorated to the point where it seriously threatens the ability of civil society organizations to engage effectively in the OGP process".[50] The Government of Azerbaijan has one year to demonstrate that the original concerns of the Open Government Partnership have been addressed.

108. During his visit, the Government informed the Special Rapporteur that earlier in September, the Council of State Support to Non-governmental Organizations under the Presidency had hosted an open government and civil society dialogue.[51] However, he also received testimonies that the dialogue had not been open to all defenders and civil society organizations, especially those who were known for their vocal criticism of the Government.

109. **The Special Rapporteur encourages the Open Government Partnership to continue reviewing the situation of human rights defenders and civil society, in law and practice, with a view to ensuring that the Government and civil society in Azerbaijan cooperate as true partners at the national level to achieve genuine transparency and accountability.**

110. In 1996, Azerbaijan and the European Union signed a Partnership and Cooperation Agreement that became effective in 1999, creating a framework for political relations and bilateral trade. Negotiations on a new agreement will reportedly be launched soon. That could be an opportunity to discuss the compliance of the legislation and procedures relating to civil society in Azerbaijan with the fundamental norms and standards of the European Union. **The Special Rapporteur recommends that civil society engagement be placed on the agenda of the negotiations, including consideration of the ways and means in which the European Union guidelines on human right defenders could inform the future Partnership and Cooperation Agreement.**

V. Conclusions

111. **Over the last several years, civil society in Azerbaijan has faced the worst situation since the country became independent. The Special Rapporteur was alarmed to observe that human rights defenders increasingly operate in a rather criminalized and heavily constrained environment. Defenders are exposed to serious challenges that in some instances appear to amount to violations of their fundamental rights and freedoms, as well as of their legitimate right to be a human rights defender, as enshrined in the Declaration on Human Rights Defenders.**

112. **Human rights defenders in Azerbaijan have been accused by public officials of being a fifth column of Western governments or of being foreign agents, accusations that are aimed at causing a misperception in the population of the truly valuable role played by civil society. Defenders are attacked, threatened, brought to court and sentenced under political or fabricated charges. They face smear campaigns in an attempt to discredit their work by relegating them to a political opposition, or indeed are branded as traitors.**

113. **Many human rights defenders and dozens of NGOs, their leaders and employees and their families have been subjected to administrative and criminal**

[50] CIVICUS World Alliance for Citizen Participation, Publish What You Pay and Article 19, letter, dated 2 March 2015, available from www.article19.org/data/files/medialibrary/37913/OGP-enquiry-request-letter---PWYP-CIVICUS-ART19.pdf.

[51] See report.az/en/domestic-politics/azerbaijan-establishes-open-government-partnership-government-civil-society-dialogue-platform/.

prosecution, including arbitrary detention, the seizure of their assets and bank accounts, travel bans and enormous fines and tax penalties. Significant challenges are connected to the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedom of expression, peaceful assembly and association. Legislation pertaining to national security can also have a restrictive impact on the environment in which defenders operate.

114. Having carefully considered the information received from the Government, civil society and other stakeholders, the Special Rapporteur considers that, overall, human rights defenders in Azerbaijan are not able to operate in a safe and enabling environment. In sum, they are increasingly at risk and do not feel safe because of increasingly restrictive legislation, the lack of access to justice and criminalizing actions by government authorities. They do not feel empowered owing to the stigmatization spearheaded by high-ranking officials and the government-affiliated media and in the light of excessively intrusive oversight and scrutiny by the authorities.

115. The Special Rapporteur urges the Government to adopt a corrective course of action and take urgent and concrete measures to address these challenges, with a view to ensuring that human rights defenders carry out their valuable activities in a safe and enabling environment. He looks forward to a continued constructive dialogue with the Government on the situation of human rights defenders in the country. As his mandate was established to provide advice to governments, he remains available to provide further advisory support to the Government of Azerbaijan in the review and implementation of his recommendations.

VI. Recommendations

116. The Special Rapporteur recommends that the Government of Azerbaijan:

(a) Ensure that human rights defenders carry out their work in a conducive legal and administrative framework and promptly implement the outstanding recommendations and decisions of international and regional human rights mechanisms and courts;

(b) Refrain from criminalizing the peaceful and legitimate activities of defenders and adopt a zero-tolerance approach, whether by public officials or non-State actors, towards the stigmatization and intimidation of defenders;

(c) Review and abolish all administrative and legislative provisions that restrict the rights of defenders, including the rights to freedom of expression, peaceful assembly and association, and ensure that domestic legislation complies with international human rights law and standards;

(d) Release all human rights defenders in detention, drop criminal charges against NGO leaders and employees, rescind travel bans and unblock their bank accounts, in line with the resolutions and recommendations of international and regional mechanisms;

(e) Make the registration of associations simpler, less onerous and expeditious, adopt a notification procedure and review the current NGO legislation to ensure simplified and more accessible funding for civil society;

(f) Refrain from restricting peaceful assemblies and ensure that any necessary restrictions do not impair the essence of the right to peaceful assembly, are prescribed by law, are proportionate and necessary in a democratic society, and still

allow demonstrations to take place within sight and sound of its object and target audience;

(g) **Ensure genuine, meaningful and regular consultation between the authorities and civil society;**

(h) **Formulate national guidelines on the promotion and protection of human rights defenders, in consultation with civil society organizations;**

(i) **Strengthen the judiciary by ensuring it can operate independently and effectively, and allocate budgetary resources to ensure independent legal assistance to defenders.**

117. **The Special Rapporteur recommends that the Office of the Commissioner for Human Rights:**

(a) **Strengthen the scope of its activities by prioritizing concerns raised by human rights defenders, establish working relations with networks of defenders and appoint a focal point for human rights defenders;**

(b) **Actively engage the Constitutional Court on constitutional complaints, including those that may be considered political or institutional, and proactively follow up on the implementation by the Government of its recommendations.**

118. **The Special Rapporteur recommends that human rights defenders:**

(a) **Become better informed about the Declaration on Human Rights Defenders and publicize it broadly in society, and make full use of the human rights mechanisms of the United Nations, the Council of Europe and OSCE in relation to human rights monitoring and protection;**

(b) **Develop and strengthen national and local networks of support with shared objectives, reinforce partnerships in self-protection and fundraising, and work intersectorally.**

119. **The Special Rapporteur recommends that the international community, the United Nations, the Council of Europe and OSCE should:**

(a) **Continue monitoring the situation of human rights defenders in Azerbaijan and intensify their efforts to empower and support them, including through political, legal and financial assistance;**

(b) **Engage with the Government to encourage meaningful and regular dialogue between the Government of Azerbaijan and civil society, in order to ensure that institution-building, development and other programmes are participatory and human rights compliant;**

(c) **Advocate for and support the Government of Azerbaijan in formulating a concrete action plan to implement the outstanding decisions and recommendations made by international and regional organizations and mechanisms, in consultation with civil society.**

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary, which took place from 6 to 16 February 2016.

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Report of the Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary (8-16 February 2016): comments by the State*

1. Remarks of the Government of Hungary on the Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst on his mission to Hungary.

2. The Government of Hungary hereby attaches general remarks and detailed information to the Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst on his mission to Hungary.

3. While we appreciate the efforts of the UN and particularly of Special Rapporteur Michel Forst, and therefore – in the air of openness and in a cooperative spirit – it was an honour to have hosted him in our country, we regret to see an unbalanced report coming out as a result.

4. First of all, it is hard to determine the nature of the Special Rapporteur's report. If it is a political document, it may only be of a subjective nature. In this case, as we assess the facts differently, we cannot agree with the report and much to our regret we have to refuse certain allegations of the Special Rapporteur. There are political forums where it is possible to discuss our different views as equal partners – nevertheless, we consider this report not to be one of them.

5. If it is a legal document, in this case we regret to see that it is not legally accurate and well-founded. The report raises questions as to the fundamental rights, but instead of their legal assessment, it draws unsubstantiated and controversial conclusions and carries out a political assessment. Although the final recommendations could actually be used for every single country on Earth and, furthermore, the report itself states that "*overall, human rights defenders have been able to safely carry out their work in Hungary*", the report still gives an unfounded – deliberately and mainly negative – impression of the situation in Hungary. The Government of Hungary has always been – also during the visit – open for discussion and with our comments below we barely try to shed light on some of the inaccurate allegations of the Special Rapporteur's report.

I. General remarks

a) about the situation of human rights in Hungary in general

6. ***"(...) the Special Rapporteur formed an overwhelming impression that the reforms generally weakened independent institutions and eroded democratic checks and balances, by bringing them increasingly under the control of the executive power or reducing their capacity to exercise effective control over the Government."***

7. ***"They led to the centralization and tightening of government's control over the judiciary, the media, religious organizations and other spheres of public life, directly or indirectly affecting human rights. The new constitution and other controversial measures adopted during this period have helped the Government "to entrench its personnel, as well as it nationalist, socially conservative policies within public institutions"."***

* Reproduced as received.

8. ***"The Special Rapporteur calls (...) for the review of the composition of the committee that nominates Constitutional judges, in order to address the perception of politicized judicial appointments."***

9. ***Recommendation: "Ensure full compliance with the international standards related to respect of human rights, democracy and rule of law (...)"***

10. As far as the general statements of the Report are concerned, several items have to be clarified especially with regards to the Fundamental Law and the legal status of independent state bodies.

11. First of all, it has to be emphasized that the Hungarian Fundamental Law fully reflects a democratic state governed by the rule of law, and is consistent with the international and European legal standards. The Fundamental Law states in its Article C) that functioning of the Hungarian State shall be based on the principle of division of powers. The detailed provisions of the Fundamental Law safeguard the relevant requirements of checks and balances, including the constitutional limits of exercising powers as well.

12. The catalogue of fundamental rights contains all fundamental rights that have become commonly granted and recognised throughout Europe. The Fundamental Law includes such principles, which were only derived indirectly from the former Constitution by the Constitutional Court. This way it also raises the case-law of the Constitutional Court to a large extent to a normative level. The fact, that the Fundamental Law stresses constitutional values more than the former Constitution, reflects the wish to ensure the durability of the Fundamental Law.

13. This statement leads to the critics of the Report with regards to the independence of democratic institutions. It has to be stressed that the constitutional institutions – including the Constitutional Court, ordinary courts, public prosecutor's offices and the State Audit Office – execute their tasks in order to ensure the rights stemming directly from the Fundamental Law or involved indirectly in the principle of rule of law. Cardinal acts safeguard the independence of these institutions. The way of appointment for these offices reflects Hungarian legal traditions: the officials are elected either by the Parliament or appointed by the President, in certain cases by the Prime Minister. High professional requirements ensure the high level execution of the tasks conferred on these institutions.

14. Taking the Constitutional Court as an example: the Constitutional Court is the principal organ for the protection of the Fundamental Law. The basic rules concerning the functioning of the Court are set in the Fundamental Law and the main regulations on the structure and procedure are determined by the cardinal CC Act. This way neither the organisation, nor the competences of the Constitutional Court can be changed without the legitimacy necessary in a democratic state. The fifteen members of the Court are elected by the Parliament with qualified majority (the vote of two-thirds of all representatives) for a term of twelve years. The President of the Court is elected by the Parliament as well. The judges elect the vice president among themselves. The mandate of the members lasts 12 years, re-election is excluded. The long term of the mandate promotes independence from the Government and the Parliament.

15. ***As these circumstances and examples show, the Fundamental Law and the cardinal laws related to it are compliant with the rules of democracy and rule of law; they ensure the efficiency of checks and balances; the democratic legitimacy and independence of democratic institutions, elected in conformity with the Fundamental Law cannot be questioned either.***

b) about the situation of human rights defenders in general

16. ***"They are exposed to serious challenges which, in some instances, appear to amount to violations of their fundamental rights and freedoms, as well as of their legitimate right to promote and defend human rights, as enshrined in the Declaration on human rights defenders."***

17. ***Recommendation: "Review all administrative and legislative provisions that restrict the rights of defenders, and ensure that domestic legislation is in line with international human rights law and standards."***

18. As the central question of the Report is, whether and how certain fundamental rights are guaranteed to human rights defenders (hereinafter: HRDs), it is inevitable to call the attention to the principle of non-discrimination being one of the most seriously protected rights in the Hungarian legal system. According to Article XV Paragraph (2) of the Fundamental Law, Hungary guarantees the fundamental rights to everyone without discrimination based on any ground such as race, colour, sex, disability, language, religion, **political or any other opinion**, ethnic or social origin, wealth, birth or any other circumstance whatsoever (emphasis added). As the primary source of law in the Hungarian legal system, the provisions of the Fundamental Law are to be applied and respected in all areas of life and branches of law.

19. Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter: the Equal Treatment Act) states in its Section 1 that all persons on the territory of Hungary must be treated with the same respect, according to the provisions of the Equal Treatment Act. Any difference of treatment based on sex, race, colour, ethnicity or belonging to an ethnicity, language, disability, health status, religious or other conviction, **political or other opinion**, family status, parenthood (pregnancy), sexual orientation, gender identity, age, social status, financial situation, the fact of having a part-time or fixed-term work contract, **belonging to an organisation whose aim is to protect certain interests or any other situation**, attribution or characteristic resulting in a less favourable treatment of these persons is to be considered direct discrimination and is prohibited by law (emphasis added).

20. The Equal Treatment Act as well as the sectorial legislation provides for efficient legal remedies in case of discrimination. The case-law of the Constitutional Court provides also extensive protection: through the new means of constitutional complaint not only against legal norms but also against judicial decisions. That is why any alleged violation of the above mentioned rights by state bodies can be challenged at independent courts and even at the Constitutional Court.

21. From this follows, that no discrimination of HRDs is possible on grounds of their opinions and activities.

II. Specific comments

a) constitutional framework and rule of law

22. ***"First, the Law often leaves it to cardinal laws "to regulate in detail the most important society setting" (constitution has over 50 references to them), resulting in significant gaps on the rule of law issues. Secondly, (...) the provisions contained in the cardinal laws are not accessible to any new parliamentary majority, unless they secure a two-thirds majority."***

23. ***"Legislative reforms in Hungary were not reinforced by procedural safeguards and were adopted with lacking public debate or meaningful consultation with stakeholders and civil society."***

24. ***Recommendation: "Ensure procedural safeguards in the legislative process that provides for a reasonable time for genuine public consultation between policy-makers, civil society and other stakeholders."***

25. Concerning the way how the provisions of the Fundamental Law are elaborated in legal acts (the adoption of cardinal acts), it has to be stressed that in Hungary it is a constitutional tradition that the constitution determines various subjects, the detailed rules of which must be laid down in a cardinal act. The special majority required for such laws does not have a practical consequence as the locking in substantive policies in these rules. Indeed, it should be understood that such majority differs from the majority required *inter alia* for constitutional amendments: "*cardinal laws require a two-thirds majority of the MPs present while a two-thirds majority of all MPs shall be applied with regard to the Constitution itself.*"[1]. In our opinion, this requirement does not amount to an obstacle to the expression of opinion of the people in their choice of their legislator but instead constitutes a proportionate safeguard as to the fundamental rights and certain institutional provisions and its primordial role in a democracy. Furthermore, passed by a two-thirds majority cardinal laws ensure a high degree of sustainability and continuity. It should also be taken into consideration that cardinal acts can be examined by the Constitutional Court in their entirety and the Constitutional Court can rule on their constitutionality, including the possibility of annulment.

26. ***That is why, cardinal laws cannot be considered as a danger to the rule of law; they rather ensure further guarantees to it: the basic rules on fundamental rights, independent state institutions etc. cannot be changed by simple parliamentary majority; a high level of political consensus is needed to regulate the most important aspects of human rights and state organisation.***

27. As far as public consultation is concerned, Act CXXXI of 2010 on public participation in the drafting of legislation contains detailed rules for the consultation with the public applicable to legislative drafts. According to this act, all draft bills, governmental decrees and ministerial decrees drafted by ministries are to be published on the Government's webpage prior to their submission to Parliament. The minister responsible for drafting a given bill is also responsible for publishing the draft and for holding a public consultation.

28. Public consultations are to be carried out within the framework of general or direct consultations. While general consultations are mandatory, direct consultations are optional. General consultation is carried out in a way that anyone (natural or legal persons, HRDs, NGOs, business companies etc.), using the e-mail address published on the webpage, may express an opinion on the draft or concept subject to public consultation. The minister responsible for drafting shall consider the opinions received and prepare a general summary of them and – in the case of rejected opinions – a standardised explanation of the reasons for rejection, which has to be published on the webpage along with the list of those offering their opinions.

29. The minister responsible for drafting the legislation may decide to form a "strategic partnership" and hold working groups or agree on other forms of consultation with the partners. Strategic partnerships may be formed with any organisation with a broad social

[1] Venice Commission, Opinion of the new Constitution of Hungary, CDL-AD(2011)016, Venice, 87th plenary session, 17-18 June 2011, §26.

reputation, for example, with NGOs, recognised churches, professional and scientific organisations, national self-governments of national minorities, organisations of interest representation, public corporations and with representatives of institutions of higher education. The minister may also involve others than the strategic partners, in a direct consultation held on a given draft law.

30. Undoubtedly, this framework does not apply to private members' bills. However, according to Article 6 of the Fundamental Law, "*[l]aws may be adopted at the initiative of the President of the Republic, the Government, any parliamentary committee, or any Member of Parliament.*" Concerning the practice of private members' bills, it should be stressed that the right of MPs to propose laws is an inherent part of their legal status as representatives. According to Article 4 of the Fundamental Law Members of Parliament shall carry out their duties in the public interest and they may not be given instructions in that regard.

31. Nevertheless, the fact that laws on public consultation and certain other elements of the pre-legislative phase (that apply to the laws proposed by the Government) do not apply to private members' bills, does not result in the complete denial of responsibility for the laws proposed; political responsibility cannot be ruled out. [Decision of the Constitutional Court 165/2011. (XII. 20.) AB] Furthermore, the publicity of the legislative procedure ensures that members of the public get to know these proposals. The expression of opinion towards parliamentary committees is not excluded either. [Attention should be called to the fact that the number of private members' bills shows declining trend in the last couple of years.]

32. **This regulatory framework shows that a wide range of participation possibilities is offered for NGOs and HRDs in public-decision making and law-making processes.**

b) freedom of expression

33. ***"The broad powers of the media regulatory body combined with a high level of media concentration and an advertising market strongly dependent on governmental contracts maintained a climate conducive to self-censorship and political influence. The media laws specify new content regulations for all media platforms, outline the powers of the new media regulatory body, and set out sanctions for the breaches of the laws (…) All media outlets, including print and online services, must register (…). The Media Council can initiate a regulatory procedure of "unbalanced reporting" (…). Sanctions are reported to be disproportionately severe (…)."***

34. ***"The right of journalists not to disclose their sources is limited because of the obligation to reveal sources in "exceptional circumstances", which does not apply to independent journalists (…)."***

35. Freedom of the press is traditionally of high importance in the Hungarian constitutional system. (This long-desired liberty can be led back to Act XVIII of 1848.) As part of the communication rights, freedom of the press has been examined by the Hungarian Constitutional Court thoroughly. The Fundamental Law reflects to these traditions as it states in its Article IX Paragraph (2) that "*Hungary shall recognize and protect the freedom and diversity of the press, and shall ensure the conditions for the freedom to receive and impart information as is necessary in a democratic society.*"

36. Even from this definition follows that the Fundamental Law considers highly important to ensure plurality and prevent the creation of information monopolies with regards to the enforcement of the freedom of the press.

17. The detailed provisions of the freedom of the press are regulated in Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content (hereinafter: Freedom of the Press Act) and in Act CLXXXV of 2010 on Media Services and on the Mass Media (hereinafter: Media Act).

18. Regarding the status of the National Media and Infocommunications Authority (hereinafter: Authority), the following has to be taken into consideration. According to Section 109 Paragraph (1) Media Act, the Authority is an autonomous regulatory agency subordinated solely to the law. Section 123 Paragraph (1) describes the Media Council as an independent body of the Authority reporting to Parliament, being the successor in title of National Radio and Television Board. The provisions of the Media Act ensure that the supervisory organs of the media services are appointed in a democratic and transparent manner as it is required in the Recommendation No. R (96) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector. The President of the Authority is appointed by the Head of State for a term of nine years on the recommendation of the Prime Minister. This method is in line with the definition of „democratic" way of appointment. The Explanatory Memorandum to Recommendation adds namely that the term "democratic" should be understood in its wider sense, given that the members of regulatory bodies are sometimes elected, sometimes nominated by public authorities (president, government or parliament) or by non-governmental organisations.[1] The rigorous professional selection criteria vis-à-vis potential candidates for the Presidency of the Authority safeguard that the choice is based on professional suitability. The rules of nomination ensure that the members of the Media Council are appointed after reaching a high level of political consensus. According to Section 123 Paragraph (2) of the Media Act, the Media Council and its members are subject only to law, and cannot be instructed within their official capacity. Strict rules of conflict of interest (including political activities) contribute also to the independence of these officials. [Sections 118 and 127 Media Act] **These norms ensure the high level of independence for the media supervisory organs.**[2]

19. The Report mentions the obligation of registry, which is – in line with the former regulation – included in the Media Act and the Freedom of the Press Act. In this regard it is important to emphasize, that this obligation does not mean "authorization". According to Section 5 Paragraph (1) of the Freedom of the Press Act *"[t]he conditions of registration may not inhibit the freedom of the press"*. Similarly, Section 41 Paragraph (2) Media Act declares that *"[r]egistration is not a precondition for taking up the service or activity."* This framework was elaborated after consultation with the European Commission. Furthermore, a petition for judicial review may be submitted against the ruling on the refusal of registration. **That is why, the requirement of registry for media platforms cannot be regarded as an unnecessary or disproportionate limitation of the freedom of expression.**

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[1] Explanatory Memorandum to Recommendation No. R (96) 23of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector. http://wcd.coe.int/ViewDoc.jsp?Ref=0.upHost=2000121&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

[2] Moreover, the Venice Commission stated in its previous report that "In response to international criticism, a number of amendments to the Media Act were passed in 2013. In particular, the mandate of the President of the Media Authority became non-renewable and the President of the Republic is now involved in the appointment process. These amendments went in the right direction."
Venice Commission, Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, CDL-AD(2015)015-e, Venice, 19-20 June 2015, §57 http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)015-e

40. As far as the question of balanced coverage is concerned, it has to be outlined that this principle exists in the Hungarian legal system since 1996. The media authority and the courts including the Constitutional Court have therefore also developed a solid case law, consequently the almost 20 years old practice of this legal obligation is well-known by the media content providers. It should be noted that the obligation of balanced coverage is not a Hungarian speciality. Many other European countries impose similar obligations on the media service providers, sometimes in the form of even more detailed provisions, and with more stringent sanctions. E.g. Article 319 of the Communications Act of the United Kingdom[4] contains the requirements of "due impartiality" and "due accuracy".[5] In case of the infringement of the requirement of balanced coverage administrative proceedings can be initiated against media services. Such proceedings can be initiated upon request by "the holder of the viewpoint that was not expressed" or the viewers or listeners. Section 181 Paragraph (1) of the Media Act contains *expressis verbis* that the Media Authority shall not have the right to open proceedings of its own motion in case of any infringement of the obligation of balanced information. In the event that the Media Council finds a violation of the requirement, no fine can be imposed: the media service provider shall broadcast or publish the decision of the Media Council or provide the applicant with an opportunity to present his or her viewpoint. **It can be concluded, that the requirement of balanced coverage ensures the plurality of media and does not lead to an excessive limitation of the freedom of the press.**

41. As far as the sanctions are concerned, the provisions of the Media Act fully comply with the principles of progressivity, proportionality and equal treatment. Section 185 Paragraph (2) of the Media Act contains the factors that have to be taken into account when imposing legal measures. These are: the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the sanction. That is why, where the infringement is considered insignificant and no re-occurrence is established, the least severe sanction should be imposed with regards to the aims of sanctioning. In case of repeat offenders, the possibility of aggravating sanctions is given in the relevant laws.

42. The conditions of sanctioning are in line with the principles established by the Constitutional Court as well. The fines imposed cannot be seen as extremely high and the number of sanctioning decisions is remarkably less than in the period between 2008 and 2010. Furthermore, the possibility of suspending the exercise of the right to provide media services for a specific period of time (which was frequently used in the last years before the new regulation entered into force) was not used by the Media Council at all. **That is why it would be inaccurate to conclude that the sanctions used by the Media Council would be "disproportionally severe".**

43. The journalistic freedom is an important value in the system of the Hungarian media law. The Freedom of the Press Act explicitly contains that "*[f]reedom of the press embodies sovereignty from the State, and from any and all organizations and interest groups.*" [Section 4 Paragraph (2)][6] With regards to the protection of journalists' sources, Section 82

[4] http://www.legislation.gov.uk/ukpga/2003/21/section/319

[5] Further examples http://mediatanacs.hu/dokumentum/2791/1321457199hungary_new_media_regulation_eng_web.pdf

[6] Section 7 of the same act contains detailed guarantees for the editorial and journalistic freedom of expression including the right to professional sovereignty and independence from the owners of the media content provider, from the sponsors of the media content provider, as well from natural and legal persons on whose behalf any commercial communication is made in any media content. According to Section 7 Paragraph (2) the sanctions prescribed in labour regulations, and those arising from other forms of employment relationship shall not apply journalists, editors etc. if they refused to

Paragraph 45a of the Hungarian Code of Criminal Procedure should be taken into consideration. This provision requires that: "*The court can order the media content provider, a person employed thereby or a person being in other legal relationship to work therewith to expose the identity of the person giving information in connection with the media content service activity only if knowing the identity of such person is indispensible in order to investigate a criminal offence punishable by three or more years of imprisonment, the evidence expected by the person's testimony cannot be substituted, and furthermore, the interest to detect the criminal offence – with regard to the special gravity of the crime – is so vital that it unquestionably exceeds the interest to keep the information confidential.*" The scope of exceptions is narrow, and the courts and competent authorities must construe these exceptions narrowly in order to ensure that the freedom of the press is respected. Therefore, it is open to the judge to order or refuse the disclosure. Moreover, there are other relevant criteria that can be found in Section 82 (6) of the Criminal Procedure Act which are in line with ECtHR's case-law and Recommendation No. R (2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.

64. The disclosure of journalistic sources shall be deemed necessary only when "reasonable alternative measures to the disclosure do not exist" and when "the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure"[7]. In this regard, the judiciary seems to occupy the best position to balance „the competing interests, namely the protection of sources on the one hand and the prevention and punishment of offences on the other"[8] and decide thus whether there is an overriding public interest. National courts develop the law in the light of their assessment of what measures are necessary in the interests of justice.[9] **This way an all-around protection is ensured for journalists from unjustified prosecutions in connection to their reporting in accordance with the principles of rule of law and legal certainty.**

65. As a conclusion, it should be added that concerning the rules introduced by the modifications adopted between 2011 and 2013, no further significant remarks have been made by the European Commission, the Venice Commission or the Hungarian Constitutional Court. In fact, Thorbjorn Jagland, Secretary General of the Council of Europe acknowledged on several occasions, that the Hungarian media law had been significantly improved.

c) Freedom of information

66. ***"Moreover, the 2015 amendment to the Act, adopted within days of introduction and without public consultation, allowed government agencies that possesses public***

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with, nor any instruction given to violation of editorial and journalistic freedom of expression. Section 9 guarantees that journalists cannot be held responsible for any infringement committed with a view to obtaining information of common interest, where obtaining such information by other means would have been impossible for the journalist in question, or it would have entailed undue difficulties, provided that the infringement committed did not result in unreasonable or grave injury, and that the obtaining of the information was not done in violation of the Act on the Protection of Classified Information.

[7] Council of Europe, Committee of Ministers, Recommendation No. R(2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information, adopted on 8 March 2000 during the 701th meeting of Ministers' Deputies, Principle 3 (Limits to the right of non-disclosure).

[8] ECtHR, *Roemen v. Luxemburg*, application 51772/9, 25 February 2003, §58.

[9] ECtHR, *Goodwin v. UK*, application 17488/90, 27 March 1996, §33.

interest data to charge the requesting party "labour costs associated" with completing the information request to be determined by that agency. Besides the vaguely defined labour costs, the law allows public bodies to reject requests if the demanded data supports future decision-making or if the petition is a repeat request, even if the initial request went unanswered (…). The former Data Protection Ombudsman's mandate was terminated before end of their term of office (…). Then his Office was transformed into a National Authority for Data Protection, which were seen as not meeting the requirement of complete independence. (…) "

47. ***Recommendation: "Review the legal provisions related to freedom of information and data protection in order to guarantee a free and uncontrolled access to public interest information."***

48. Act CXII of 2011 on the right to informational self-determination and on freedom of information (hereinafter: InfoAct), contains the possibility of charging a fee covering only the costs of disclosure of information, which shall be communicated to the requesting party in advance. This possibility is based on the assumption that the public duty of fulfilling data request should not lead to a disproportionate hindrance of the basic duties of state bodies, authorities etc. This problem is especially urgent if the data request refers to such documents, where collecting or making data anonymous demands much time (e.g. in case of documents dated back to several years) or expertise (e.g. several personal or classified data included).

49. The Section 29 Paragraph (5) InfoAct lists the elements of the calculated fee: In addition to the material cost of the data carrier and postage, the InfoAct only allows labour costs to be charged if the fulfilment of a data request involves the disproportionate use of human resources necessary to carry out the basic activities of the organisation performing public functions. Accordingly, in cases where the amount of data is small, data are easily accessible and can be provided by electronic means, the InfoAct does not allow taking into account this cost element. As it is apparent from this list, only such costs can be charged which are directly related to the data request and might actually arise in relation to the fulfilment of the data request. The limitation of the amount of chargeable costs stems from Section 29 Paragraph (6) InfoAct, as well as the governmental decree issued on the basis of this provision. That is why the calculation of costs cannot be arbitrary or disproportionate. The amount of costs charged cannot be higher than the actual costs, so the provision does not lead to enrichment for state bodies. Only in exceptional cases can the fulfilment of data requests be conditional to the advance payment of related costs. In such cases the requesting party shall be notified within fifteen days from the date of receipt of his or her request if there is any alternate solution available instead of making a copy of those documents. The justification of cost-charging must be proven by the data controller.

50. Finally, it has to be mentioned that Hungarian law prescribes several public interest data to be published on the homepage of state bodies; in this case the charging of costs does not arise at all.

51. This model is in line with the Council of Europe Convention on Access to Official Documents, which contains in Article 7 that "*[a] fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published*". **It can be concluded that the current model of charging costs for data requests does not lead to an unnecessary or disproportionate limitation of the freedom of information.**

52. As far as the possibility of rejecting data requests is concerned, Section 27 Paragraphs (5) and (6) Info Act contain detailed rules for the case if an information is part of, and in support of, a decision-making process. Such data shall not be made available to the public for ten years from the date it was compiled or recorded, unless public access is

authorized by the head of the body in possession of such data. It cannot be denied that there is an important public interest in upholding the legal functioning of bodies with public service functions by limitation of access to data for a certain period. However, it is important to emphasize that while the request for disclosure of information underlying a decision may be rejected within the time limit also after the decision is adopted, but only if the information is retained to support a future decision as well, or if disclosure is likely to jeopardize the legal functioning of the body with public service functions or the discharging of its duties without any undue influence (in particular the freedom to express its position during the preliminary stages of the decision-making process). Of course, not all data connected to a particular case are basis of a decision. The body with public service functions that has the data of public interest shall be able to define the future decision to which the data are connected. The burden of proof lies on the data controller.

53. **The possibility of limiting the access to such data for a reasonable time, in case such access could jeopardize the public interest, and also with regards to the procedural guarantees is in accordance with the acknowledged limitations of the right to freedom of information.**

54. Concerning the possibility of rejecting repeat requests, the InfoAct contains four important conditions, which significantly limit the use of this option by the data controller. The body with public service functions, that has the information on record, can only reject the request, if it is identical to the former request, i.e. it is submitted by the same party for the same data within a period of one year, provided that no change took place in the data concerned in the meantime. If the former data request had remained unanswered or if it has been rejected unlawfully, these can be remedied at court or in a procedure of the Data Protection Authority. That is why this possibility – limited by strict conditions – does not apply, if the data request has not been fulfilled due to a negligence of a body with public service functions. **As a consequence, the rule cannot be used to cover illegal conduct; it applies only to reduce unjustified workload on lawfully functioning public bodies.**

55. As far as the independence of the Data Protection Authority is concerned, firstly it has to be emphasised, that the Fundamental Law and the InfoAct establish the Data Protection Authority in accordance with relevant EU and international obligations. Pursuant to Article VI Paragraph (3) of the Fundamental Law of Hungary *'[t]he application of the right to the protection of personal data and to access data of public interest shall be supervised by an independent authority established by a cardinal Act.'* The Data Protection Authority is responsible for supervising and promoting the enforcement of the right to the protection of personal data and of the right to access to data of public interest. Pursuant to Section 38 Paragraph (1) of the InfoAct, the Data Protection Authority shall be an autonomous state administration organ. This legal status ensures complete independence for the Data Protection Authority as to its organisation, tasks and competences, personnel, finances and budget.

56. From an organisational point of view, the Data Protection Authority does not form part of the hierarchical organisation of public administration, it is not under the direction or supervision of the Government, nor is it established by the Government but by the InfoAct, the relevant provisions of which qualify as cardinal, i. e. provisions to be adopted by a two-thirds majority. The Data Protection Authority exercises its tasks and competences laid down in Acts free from any outside influence and according to professional criteria only. The Data Protection Authority may autonomously manage the budget appropriated for it in the Act on the central budget, and – with the narrowly defined exception of the budgetary effects of a possible natural disaster – only the Data Protection Authority or Parliament may take decisions thereon. **The independence of the Data Protection Authority has been questioned neither by the Venice Commission nor by the institutions of the European Union.**

57. Finally, it has to be added that ordinary courts as well as the Constitutional Court interpret the right to public information in a rather extensive manner. The InfoAct provides only a very limited opportunity to restrict public access to data of public interest (e.g. with regard to confidential information, protection of decision-making process). All of these restrictions are in line with applicable international norms, and are necessary and proportionate in a democratic society. The data request possibilities are complemented with a broad obligation of public institutions to publish public data on their websites. The obligations stemming from the right to public information (irrespective of being based upon a data request or on statutory obligations for proactive publication of data) are binding for state-owned companies as well. The compliance with the obligations under InfoAct is controlled by an independent Authority, whose procedures can be initiated free of charge. **As a conclusion it has to be stressed that the current system of access to public information in Hungary, ensured in the InfoAct is in line with the international standards. This has been confirmed by the Venice Commission as well.**[10]

d) freedom of assembly

58. ***"The Special Rapporteur urges the Government to ensure protection of defenders who peacefully assemble from individuals or groups of individuals, including agent-provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies."***

59. ***Recommendations: "Ensure that restrictions to peaceful assembly do not impair the essence of the right, are prescribed by law, are proportionate and 'necessary in a democratic society' and still allow demonstrations to take place within 'sight and sound' of its object and target audience. Provide protection during peaceful assemblies from individuals or groups, who aim at disrupting or dispersing such assemblies."***

60. Act III of 1989 on the Freedom of Assembly (hereinafter: Freedom of Assembly Act) was elaborated in the course of the transition, before the thorough amendment of the Constitution in 1989. Since then the Act has been amended several times. The interpretation of the Act, as well as the relevant case-law have been formed by the decisions of the Constitutional Court.

61. According to the case-law of the Hungarian Constitutional Court, the freedom of assembly has a special role among communicational rights, as it contributes significantly to obtaining and sharing information and opinions with others and shaping and expressing opinions jointly. That is why it also enables the individual to take part with weight in social and political processes.

62. The significance of this right is acknowledged by the Freedom of Assembly Act as well. According to Section 2 of the Freedom of Assembly Act *'[t]he right of assembly may be exercised in the form of peaceful gatherings, rallies and demonstrations (hereinafter: "organized events"), which give participants an opportunity to express their opinion freely.'* Organised events can be held on public ground after notification; there are only two reasons for prohibiting such an event (if it is likely that the event would seriously disturb the operation of representative bodies or courts, or if traffic cannot be arranged on other

[10] „The Hungarian law on self-determination and freedom of information (Act CXII/2011, as of 1 June 2012) may be considered, as a whole, as complying with the applicable European and international standards." Opinion on Act CXII of 2011 on informational Self-determination and Freedom of Information of Hungary, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012) http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)023-e

routes). A prohibitive decision of the authorities may be challenged at court. The reasons for prohibition are interpreted narrowly, both by ordinary courts and the Constitutional Court. Freedom of assembly requires protection both against unjustified interference of state organs and against such an interference of others, for example counterdemonstrators or those otherwise opposing the event.

63. The Constitutional Court also stated that the authorities – should it be necessary – must secure the peaceful assembly. The order of demonstrations has to be maintained primarily by the organisers. The police may be present at demonstrations with suitable forces and disperse it in cases listed in the Freedom of Assembly Act. The circumstances which can give rise to dispersing an organised event are all directly connected to protection of the rights and freedoms of others, prevention of crimes and maintenance of public order. At exercising its rights, the Police shall act independently of the purpose or duration of the event or the number of the participants in accordance with the prohibition of discrimination.

64. The possibility of challenging the decisions, actions of the Police at ordinary courts is given. Against the decisions of the courts constitutional complaint is possible at the Constitutional Court, if the affected person considers that the judicial decision made regarding the merits of the case or other decision terminating the judicial proceedings violates his fundamental right to peaceful assembly. It has to be added that according to the Constitutional Court the protection of freedom of assembly also covers peaceful public gatherings where the nature of the event giving cause to exercising freedom of assembly event necessitates a gathering at short notice (rapid assemblies) or (spontaneously) without any preceding organisation.

65. As far as the practical aspects are concerned, the case-law of the Commissioner might be a relevant reference point. [Any individual, who thinks that his freedom of assembly has been violated by authorities or there is an imminent danger thereto, may turn to the Commissioner.] In this context, it has to be emphasized that in comparison e.g. to the period 2008 – 2010, since 2014 there have not been large quantities of complaints to the Commissioner in connection with the violation of the freedom of assembly. On the contrary, the annual report of the Commissioner about the year 2014 shows that the Commissioner conducted 1 single inquiry and no other state institution involved in the protection of human rights (Equal Treatment Authority, National Authority for Data Protection and Freedom of Information, Commissioner for Educational Rights and Independent Police Complaints Board) was addressed with complaints on this matter.[11] From the statistics of the Commissioner and the attached reports follows that in 2015 there have not been any complaints to these institutions in connection with the freedom of assembly.[12]

66. It can be concluded that the Hungarian constitutional approach to the freedom of assembly is accordance with Article 21 of the International Covenant on Civil and Political Rights as well as Article 11 of the European Convention on Human Rights and Article 12 of the Charter of Fundamental Rights of the European Union.

67. **As the regulatory framework shows, the legislation in force provides a high level protection for the freedom of assembly for organizers and participants while respecting and ensuring the legitimate interests of the public and is in line with the guarantees enlisted in the Recommendations of the Report. The efficiency of the freedom of assembly is safeguarded by the guarantees of the Freedom of Assembly Act, and the practice does not give rise to concerns either.**

[11] http://www.ajbh.hu/documents/10180/2119301/AJBH+Besz%C3%A1mol%C3%B3%202014/e4cb6abb-2b16-4f67-bcdf-e24ccb74cca2?version=1.0

[12] http://www.ajbh.hu/documents/10180/2515707/AJBH+Besz%C3%A1mol%C3%B3%202015/4507ceb3-4c6b-4f54-b212-63d1743c8e13?version=1.0

e) access to justice

68. ***"(…) [A]ccess to the Constitutional Court was radically limited by scrapping the previously robust system of action popularis, which allowed any human rights defender to bring the case to the Court on issues of broader public concern."***

69. ***The Special Rapporteur calls for the restoration of the Constitutional Court's jurisdiction through the repeal of the legal provisions that limit the Court's jurisdiction and for the review of the composition of the Committee that nominates Constitutional judges, in order to address the perception of politicized judicial appointments."***

70. As far as the organisation of the Constitutional Court is concerned, the number of judges has been raised to fifteen (instead the former eleven). The members of the Court are elected by the Parliament with qualified majority (the vote of two-thirds of all representatives). The President of the Court is elected by Parliament as well. According to Section 7 Paragraph (1) CC Act, members of the Constitutional Court shall be proposed by a Nominating Committee, made up of at least nine and at most fifteen members, appointed by the parliamentary fractions of the parties represented in the Parliament. The Committee shall contain at least one member from each of the parliamentary fractions. The candidates shall be heard by Parliament's standing committee dealing with constitutional matters. [This rule is basically the same as the provision of the former Act on the Constitutional Court before the entry into force of the Fundamental Law.]

71. Those Hungarian citizens who have no criminal record and have the right to stand as a candidate in parliamentary elections shall be eligible to become a Member of the Constitutional Court, if they have a law degree, have reached 45 years of age, but have not reached 70 years of age; and are theoretical lawyers of outstanding knowledge (university professor or doctor of the Hungarian Academy of Sciences) or have at least twenty years of professional work experience in the field of law.

72. **These conditions ensure that members of the Constitutional Court are elected from among the most excellent Hungarian lawyers; a possibility of "politicized" appointments cannot be perceived.**

73. The mandate of the members lasts 12 years, re-election is excluded. In the case of the members of the Constitutional Court, the long term of the mandate promotes independence from the Government and the Parliament. From the perspective of the functioning of the state and society, the institution has important, significant tasks. For the sake of "keeping distance" from the Government and the Parliament, the president and members receive their mandates for a term extending beyond a parliamentary session.

74. Regarding the competences of the Constitutional Court, the general rules are set out in the Fundamental Law, providing the necessary guarantees for the activity of the Constitutional Court. Probably the most important change concerning the rules on the competences of the Constitutional Court is the abolition of *actio popularis* and parallelly, the alteration of the institution of constitutional complaint. Before the adoption of the Fundamental Law the core competence of the Court was the ex post review of the conformity of pieces of legislation with the Constitution, because anyone even without a legal interest was entitled to submit a petition asking the constitutional review of a legal norm. However, according to the new rules, such a proceeding can only be initiated by the Government, one-fourth of all Members of Parliament, the President of the Supreme Court (Kúria), the Prosecutor General and the Commissioner. It has to be emphasized, that according to Article 30 of the Fundamental Law and the provisions of the CFR Act anyone may turn to the Commissioner, if in his or her opinion the activity or omission of an authority infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto, provided that this person has exhausted the available

administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him or her. If as a result of his inquiries the Commissioner comes to the conclusion that the infringement of fundamental rights is in connection with the unconstitutionality of a legal norm, he or she shall require the ex-post review from the Constitutional Court.

75. Abolition of the general right to make a motion without a legal interest was demanded also by the Constitutional Court because of the extent of its caseload. At the same time constitutional judges also urged the introduction of the „real", that is, the German type of constitutional complaint. Through the "real" constitutional complaint, the Constitutional Court can also be addressed, if the judicial decision made regarding the merits of the case or other decision terminating the judicial proceedings – so not the legal regulation applied – violates the complainant's rights laid down in the Fundamental Law. [The former form of constitutional complaint remained unchanged, and the so-called direct constitutional complaint makes possible to turn to the Constitutional Court if the violation of fundamental rights can be led back to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, and so the complainant's rights were violated directly, without a judicial decision.]

76. So, the modification of the Constitutional Court's competences is a change of approach – the constitutional review focuses more intensively on subjective human rights protection – which, however, does not have a negative impact on the efficiency of the protection provided by the Constitutional Court. The Venice Commission examined the modification of the regulation on the Constitutional Court and on the whole it formed a positive opinion in relation to the changes.

77. **As a conclusion, the Fundamental Law and the cardinal laws ensure the democratic legitimacy and independence of the Constitutional Court in conformity with the principle of rule of law.**

f) national human rights institution

78. ***"The previous system of four ombudsmen was replaced by one Parliamentary Commissioner for Fundamental Rights. Despite the 2014 accreditation of an "A" status to the institution as compliant with the Paris Principles, the law amendments and the lack of enforceability of its recommendations have weakened the protection in relation to certain rights and the effectiveness of the Ombudsman's mandate. (…) Nevertheless, there are concerns that despite its mandate, the Office has been reluctant to refer complaints to the Constitutional Court for review, in cases that it deems political or institutional. (…) In order to endure the credibility and effectiveness of its work, the Government should increase allocated budget to the Office (…) The Special Rapporteur also recommends that the Ombudsman expand the scope of its activities to provide protection for human rights defenders."***

79. ***Recommendations: "Strengthen the role and independence of the Ombudsman and reinforce the financial autonomy of the Office. Consult the Ombudsman in the legislative process and ensure adequate implementation of the Ombudsman's recommendations."***

80. The Fundamental Law establishes in its Article 30 the institution of the Commissioner, who shall undertake activities aimed at protecting fundamental rights. This provision definitely means a change of approach with regards to the institution of ombudsmen. The former system was based on a model of four ombudsmen: Until 1 January 2012 four ombudsmen were active: the (general) commissioner for fundamental rights, the commissioner for the rights of the minorities, the commissioner for future generations

(dealing with issues concerning environment protection) and the commissioner for data protection and freedom of information.

81. Nevertheless, during the work of the commissioner for data protection it became clear that due to the spread of information technology, the conditions caused by globalisation and the change of the social attitude, a restructuring of examination and penalisation powers was necessary. The most suitable organisational form to tackle these new challenges was an autonomous authority established instead of the institution of the commissioner for data protection. The other two 'specialized' commissioners, namely the commissioner for the rights of the minorities and the commissioner for future generations continue their work as deputies of the Commissioner in accordance with Article 30 Paragraph (3) of the Fundamental Law. This structural change means primarily a change of approach emphasising the unified protection of human rights. However, the constitutional designation of the deputies together with the provisions of the CFR Act (especially Section 3) ensure that the Deputies do not simply substitute the Commissioner but have their own competencies and responsibilities in the special fields assigned to them. **This way the new model ensures a high level protection of these special social interests, also compared to the previous system.**

82. As far as the powers of the Commissioner are concerned, it has to be emphasized that the CFR Act does not mean any decline in the level of human rights protection in comparison with the former Act LIX of 1993 on the Parliamentary Commissioner of Fundamental Rights (hereinafter: PCFR Act). On the contrary, Sections 31-38 CFR Act[13] ensure in their entirety and with regards to the single measures applicable by the Commissioner the same powers as Sections 19-26 PCFR Act. As far as the practice is concerned, it shows that the Commissioner regularly initiates proceedings at the Constitutional Court. As the possibility of *actio popularis* in case of posterior norm control procedure of the Constitutional Court is not given anymore, the role of the Commissioner has become more important in initiating such procedures, if as a result of his inquiries he comes to the conclusion that the infringement of fundamental rights is in connection with the unconstitutionality of a legal norm. According to the publicly available database of the Constitutional Court, the Commissioner has requested the Constitutional Courts proceedings 62 times since 1st January 2012.[14] The cases include complex institutional or politically relevant matters as well: e.g. social security issues, protection of vulnerable social groups, rights of children, state security control or protection of classified data.

83. **Consequently, the human rights protection ensured by the institution of the Commissioner is efficient on the normative and practical level as well.**

[13] The powers of the Commissioner include – among others – the following: If, on the basis of an inquiry conducted, the Commissioner comes to the conclusion that the impropriety in relation to a fundamental right does exist, in order to redress it he or she may – by simultaneously informing the authority subject to inquiry – address a recommendation to the supervisory organ of the authority subject to inquiry [Section 31 Paragraph (1) CFR Act]. In order to redress the uncovered impropriety related to a fundamental right, the Commissioner may initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General [Section 33 Paragraph (1) CFR Act]. If the impropriety noticed by the Commissioner is related to the protection of personal data, he or she shall report it to the Data Protection Authority. If he or she considers that there is a well-founded suspicion that a crime has been committed, he or she shall initiate criminal proceedings with the organ authorised to start such proceedings. If the impropriety can be lead back to the deficiencies of a legal norm, he can turn to the Constitutional Court (or in case of decrees of local self-governments to the Curia).

[14] http://www.alkotmanybirosag.hu/hatarozat-kereso (accessed: 24 January 2017)

84. Concerning the focus of investigations by the Commissioner, the most important factor is that anyone may turn to the Commissioner, if in his or her opinion the activity or omission of an authority infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto, provided that this person has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him or her. The possibility of individual complaint to the Commissioner is strengthened by the facts that the proceedings of the Commissioner are free of charge and the identity of the person who has filed the petition may only be revealed by if the inquiry could not be conducted otherwise. The petitioner is informed by the Commissioner about the outcome of the inquiry and about any measure taken. Furthermore, the CFR Act prescribes in Section 1 Paragraph (2) that the Commissioner shall pay special attention, especially by conducting proceedings *ex officio*, to the protection of the rights of children, the interests of future generations, the rights of nationalities living in Hungary and the rights of the most vulnerable social groups. The Commissioner also operates a system for public interest announcements and examines the practice, how public authorities deal with these. [According to Article XXV of the Fundamental Law '*[e]veryone shall have the right to submit - either individually or jointly with others - a written request, complaint or proposal to any organ exercising executive powers.*'] **This way HRDs have the right to turn to the Commissioner without any specific limitations according to the general rules of the CFR Act; their rights are protected under all the guarantees of the CFR Act.**

85. The budgetary and financial independence of the Office of the Commissioner for Fundamental Rights is safeguarded by Section 41 Paragraph (4) of the CFR Act: "*[t]he Office shall have a separate chapter in the central budget and the powers of the head of organ directing the chapter shall be exercised by the Secretary General.*" Comparing the budget of the Office of the Commissioner for Fundamental Rights and the Data Protection Authority to the former Office of Parliamentary Commissioners (hereinafter: OPC), the following conclusions can be drawn: while the budget for the OPC was 1585 million HUF in 2010, the amount allocated in 2017 budget for the Office of the Commissioner for Fundamental Rights and the Data Protection Authority together is 2030 million HUF. This amounts to a nearly 30% increase of budget in seven years. **That is why the financial conditions of the work for the human rights institution can be considered as given in the Hungarian system.**

86. **The above described aspects of the national human rights institution show that the Hungarian legislation fully complies with the international standards, and the Government considers it as an adequate and important confirmation, that the national human rights institution received an "A" status accreditation from the Office of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights on 29 November 2014.**

g) Stigmatization of human rights defenders

87. The Government established the Human Rights Working Group in its decision adopted in February 2012 (Government Resolution 1039/2012 (II.22).) with the main purpose of monitoring the implementation of human rights in Hungary, **conducting consultations with civil society organisations, representative associations and other professional and constitutional bodies as well as of promoting professional communication on the implementation of human rights in Hungary.** The Working Group also monitors the implementation of the fully or partially accepted recommendations in relation to Hungary of the United Nations, Human Rights Council, Universal Periodic Review (UPR) Working Group.

88. The Working Group established the Human Rights Roundtable, which currently operates with **62 civil organisation** members and **further 46 organisations** take part in the activities of the thematic working groups based on invitation. Since 2013 the **thematic working groups have had 75** meetings. The civil organisations and the Government usually jointly establish the agenda of the meetings. In some Thematic Working Groups, only proposals of civil representatives are discussed, but there is usually co-operation in that regard. The operation of the thematic working groups is greatly affected by the composition and proposals of civil and government participants. In order to ensure the transparency of operation of the Working Group and the thematic working groups, the memos of each meeting are uploaded to emberijogok.kormany.hu website.

89. **The work of the Human Rights Working Group shows the Government's commitment to continue a permanent dialogue with NGOs.**

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Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan, which took place from 14 to 22 September 2016.

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Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan (14 - 22 September 2016): comments by the State*

General comments

1. The Government of Azerbaijan has been closely cooperating with the Special Rapporteur on the situation of human rights defenders in line with the United Nations Human Rights Council resolution 16/5. The visit by the Special Rapporteur to Azerbaijan on 14-22 September 2016, which took place in accordance with the standing invitation of Azerbaijan, was considered in the context of contribution to further enhancement of constructive cooperation between Azerbaijan and relevant UN mechanisms. As a sign of openness and willingness for constructive engagement the Azerbaijani side organized all requested meetings of the Special Rapporteur with authorities, as well as created necessary conditions for the Special Rapporteur to meet with persons in detention upon his request. Furthermore, Azerbaijani side provided additional information to the Special Rapporteur and his staff after the visit thereby demonstrating readiness for continued engagement.

2. However, the report of the Special Rapporteur on his mission leaves an impression that this document runs against the spirit of cooperation between Azerbaijan and UN human rights mechanisms. It fails to reflect positive developments in the country in respective fields thereby creating a wrong impression on the real situation on the ground. The report of the Special Rapporteur is one-sided, biased and unbalanced. Such an approach by the Special Rapporteur renders very little to enhancement of constructive interaction between Azerbaijan and UN mechanisms and in fact could potentially negatively impact future relations between the country and the human rights mechanisms of the organization.

3. The Special Rapporteur chose to build his judgment and provide an assessment of the situation on the basis of numerous references to the reports of international governmental and non-governmental organizations, Azerbaijani NGOs, as well as web-sites of news agencies. The credibility of most of these sources raises serious questions due to the lack of their objectivity and impartiality. In this context, it is rather regrettable that despite numerous meetings with authorities during the visit, which were characterized as fruitful by both the Special Rapporteur and respective government institutions, the report contains very little, if not any references to information provided to the Special Rapporteur during those meetings and after his visit. It therefore prompts valid questions about the necessity for Special Rapporteur's visit and added value of the meetings he had with authorities during the visit.

4. Inclusion of some assessments, particularly on economic situation of the country, could be considered as unrelated to the subject of the present report and offering no added value due to the loose connection between the allegations on the complexity of economic situation and its impact on the situation of the human rights defenders. Moreover, reference to the political system as "increasingly authoritarian" is completely false and out of context and by making such a reference the Special Rapporteur oversteps his mandate. In spite of existence of legally valid court sentences, there are claims in the report on falsification of charges against certain individuals. Such claims should be considered as disrespecting the independence of the court system and legitimacy of the court decisions. The allegations on stigmatizing impact of the use of rhetoric against human rights defenders by government officials are also in a sense quite absurd as they overlook genuine conducive environment

* Reproduced as received.

for the operation of civil society and efficient interaction between the civil society and the government.

9. Although the Special Rapporteur refers to the UN Declaration on Human Rights Defenders, an extensive assessment of the situation on freedom of expression, freedom of information, freedom of association, freedom of peaceful assembly and access to justice overlaps with the mandates of other respective special rapporteurs. Furthermore, by urging the Governments and international community to refer to this Declaration the Special Rapporteur should also acknowledge that said Declaration shall not be misused in the performance of his own responsibilities. The preliminary statement of the Special Rapporteur left an impression among the government agencies that a number of references contained in the statement were outside of the mandate of the Special Rapporteur and careful study of the present report suggests that not much has changed in this respect.

6. The Government of Azerbaijan attaches particular importance to enhanced cooperation with the UN mechanisms. Extension of standing invitation to UN special procedure mandate holders, within the framework of which Special Rapporteur's visit to Azerbaijan took place, is an example of Azerbaijan's approach. Azerbaijan is ready to continue enhanced dialogue and interaction with UN human rights mechanisms on the basis of mutual respect and understanding and expects similar attitude from these mechanisms. Azerbaijan side hopes that in the future this interaction will be pursued in the spirit of constructive dialogue and based on balanced and objective assessments.

Specific comments

I. International, regional and national framework

7. The effectiveness of combating corruption has been characterized by positive indicators in the report of "2016 Global Corruption Barometer" of Transparency International. The position of Azerbaijan has also increased in the "Corruption Perception Index".

8. Taking into account the importance of international cooperation in this field, Azerbaijan, being one of the founders of the International Association of Anti-Corruption Authorities (IAACA), takes an active part in its work.

9. In 2016 the Anti-Corruption Department under the Prosecutor General examined 9 [illegible] appeals by the citizens. 251 facts of criminal nature were examined, criminal investigation on 199 of them were launched. The Department completed investigation of 201 criminal cases launched against 301 individuals and brought the cases before the courts in 2016.

10. It is worth mentioning that the resolution on "Prevention of corruption by promoting efficient public service delivery through technological innovations" submitted by Azerbaijan was unanimously adopted within the Conference of the States Parties to the United Nations Convention against Corruption in November, 2015. The resolution encourages States to share their best practices in the application of technological innovations and electronic services in public service delivery.

11. Establishment and successful functioning of the State Agency for Services to Citizens and Social Innovations under the President of the Republic of Azerbaijan (ASAN or Easy Services) is the model of effective public governance in the region. ASAN has significantly increased public confidence in state bodies and is now widely recognized. ASAN was awarded with the United Nations Public Service Award.

III. Civil society environment

A. Legal and institutional framework

12. The President of the Republic of Azerbaijan initiated the September 2016 Referendum in line with the right he is granted by Clause 18 of Article 109 of the Constitution of the Republic of Azerbaijan. The Constitution of the Republic of Azerbaijan envisages no mechanism whereby the President of Azerbaijan should consult Azerbaijani Parliament in order to implement the foregoing right. The 2009 Referendum on amendments to the Constitution of the Republic of Azerbaijan was directly initiated by the Parliament of Azerbaijan that, notably, never consulted the President either.

13. The Draft Referendum Act on amending Azerbaijani Constitution was published on July the 18th, 2016. There was enough time from July 18 through 26 for every citizen of Azerbaijan and every organization to have provided their feedback on the Draft. On 26 July, the approved Draft was published yet again, this time together with some recommendations of the Constitutional Court. 70 days was enough of a period for anyone to consider and even study the Draft Referendum Act.

14. Under the system of the division of powers, the legislative and executive branches of a presidential republic fall under different realms of institutional responsibility. Theoretically, the Parliament can adopt a resolution of no confidence in the Cabinet of Ministers on an unlimited number of occasions and during any period. This can virtually bring about mere incapacitation of the executive power, which is even more unacceptable for a country that for almost three decades has been in a state of war with Armenia. The aim of the amendment was to enhance political responsibility of the Parliament concerning the issue of expressing confidence in the Cabinet of Ministers.

15. Both the Constitutional Court and Supreme Court are collegial bodies that adopt decisions on a collegial basis. The Constitutional Court passes decisions in the course of its general proceedings while the Supreme Court makes decisions at plenary sessions. In order to ensure collegial function of the courts, the Parliament must nominate more than a half of these courts' judges. Based on Article 86 and Article 102 of Constitution of the Republic of Azerbaijan, the Constitutional Court is entitled to approve the results of Parliamentary and Presidential elections. However, this Constitutional requirement can easily be violated by Parliament's failure to nominate 5 out of 9 members of the Constitutional Court thus making its function obsolete. As the head of the State, the President of the Republic of Azerbaijan must ensure proper functioning of all state institutions.

16. On April 27, 2016, the President of Azerbaijan approved the "National Action Plan on Open Government Promotion for 2016-2018". This Plan will contribute inter alia to improvement of anticorruption legislation, supporting economic reforms through anticorruption measures, raising awareness of citizens, strengthening contacts with civil society, and increasing citizens' confidence in public authorities.

17. Pursuant to the article 7 of the Constitution, state power in the Republic of Azerbaijan is based on a principle of division of powers:

- Milli Mejlis of the Republic of Azerbaijan exercises legislative power;
- executive power belongs to the President;
- law courts exercise judicial power.

18. According to provisions of the present Constitution executive, legislative and judicial powers interact and are independent within the limits of their authority.

19. Fully aware of the role that the vibrant civil society can play in a democratic country, the Government of Azerbaijan has taken continuous steps in ensuring free functioning of non-government organizations and further enhancing the capacities of the domestic NGOs.

20. On 21 October 2016, President of Azerbaijan signed the Decree "On the application of the principle of single window in the procedure of grant-giving by international donors on the territory of the Republic of Azerbaijan", which serves to increase support to the activities of civil society institutions, and simplification of grant-giving procedures and transparency. Measures are being taken for the implementation of this important document.

21. Relevant applications of each foreign donor organization were examined in accordance with the national legislation and comments were provided timely by the Ministry of Finance. In 2016 applications of 9 out of 11 foreign donor organizations were considered positively, whereas applications of another 2 organizations were returned due to shortcomings in their papers. Applications of those organizations have been considered positively after they had duly addressed their shortcomings.

B. Situation of human rights defenders

1. Stigmatization, 2. Criminalization

22. Conducive environment is in place for free and unhindered functioning of the civil society organizations in Azerbaijan which attests itself among others in the overall number of non-government organizations operating in the country. It is worth mentioning that 309 non-commercial organizations were registered in 2015-2016 bringing total number of registered organizations to 4369.

23. Allegations about politically motivated judicial proceedings, including against human rights defenders are not valid. It should be noted that in Azerbaijan only persons suspected in committing a concrete crime are brought to liability and principle of equality of all before law is always observed irrespective of an origin, property and official status, beliefs, belonging to political parties, labor unions and other public associations, as well as other circumstances.

24. According to the legislation judicial proceedings in Azerbaijan are carried out on the basis of principles of competitiveness and presumption of innocence. These principles are steadily observed in practice.

25. Several groundless comments on the lack of independence of the court system and its functioning under the Government's influence, as well as allegations on unfair dismissal of some members of the Bar Association based on their activities can be assessed as lop-sided approach of the Special Rapporteur.

26. On the allegations related to updated list of "political prisoners" it has to be underlined that the arrests and detentions of some individuals referred to by some international institutions and non-government organizations relate to the specific criminal offences under the Criminal Code of the Republic of Azerbaijan and have nothing to do with political and human rights related activities. These activities do not mean that these individuals can put themselves above the law and escape from the justified legal proceedings

3. Freedom of expression

27. The claims on the arrest of journalists on the basis of trumped-up charges and their sentences to long prison terms without a fair trial are due to distorted information presenting a biased view of the actual situation, whereby certain persons have committed

punishable acts and been sentenced to various terms of deprivation of liberty by the court decisions. Those decisions have nothing to do with the journalistic work of the individuals concerned, and the principle that everyone is equal before the law, regardless of position and occupation, applies to all cases.

28. Since 2009 the moratorium has been in effect on the application of articles 147 and 148 of the Criminal Code and no journalist has been criminally charged for defamation in Azerbaijan since then. The Law on Defamation was drafted in 2005, 2011 and 2013 with the requested expertise of the Council of Europe's Venice Commission. In February 2014, the plenum of the Supreme Court took a decision on the necessity of ensuring by the domestic courts that the prison sentences in defamation cases are imposed only in exceptional circumstances. Experience shows that due to lack of economic independence of media and reported cases of continued insults and libel against individuals by media outlets, currently the adoption of this Law could be counter-productive and complicate the situation.

29. According to the official information presented by the State Security Service of the Republic of Azerbaijan police found materials concerning «Hizmet hereket» and Fathullah Gulen in the apartment and vehicle of **Faig Amirov**, Director of «Azadlig» newspaper on 20 August 2016. On 22 August, 2016 he was arrested by the court decision on charges of inciting religious hatred under Article 283.2.2 and infringement on civil rights performing religious ceremony under Article 168.1 of the Criminal Code of the Republic of Azerbaijan and is currently held in pre-trial detention.

30. In order to avoid provocation directed against the strategic partnership relations between Turkey and Azerbaijan and not to allow terrorist propaganda to be openly broadcasted, the activity of the **ANS TV channel** was suspended temporarily by the relevant decision of the National Television and Radio Council. Preliminary investigation continues under articles 168.1, 283.2.2 of the Criminal Code of the Republic of Azerbaijan.

31. Upon the facts on violations in activities of some local and foreign NGOs, including **"the Institute for Reporters' Freedom and Safety"**, a criminal case was launched in accordance with the articles 308.1 (abuse of the office) and 313 (fraud) of the Criminal Code of the Republic of Azerbaijan. As a result of investigation facts of illegal ownership and tax evasion by the Chairman of the Institute were established for the period of 2006-2014. In view of thorough inspection, relevant documents, as well as computers, CD and other data carriers were seized. The abovementioned actions were authorized by the relevant court decision issued on August 07, 2015.

32. On April 22, 2014 the criminal case was launched on the basis of materials submitted by the Ministry of Justice of the Republic of Azerbaijan to the General Prosecutor's Office with regard to legislative violations disclosed in activities of a number of local non-governmental organizations and branches of some foreign organizations. It was established within the same case that the chief of the Baku Bureau of the non-profit organization - Radio Free Europe/Radio Freedom **Khadija Ismayilova** while discharging her service functions evaded large amounts of funds from state budget and through illegal entrepreneurship obtained large amount of profit. Taking into account the founded suspicions about her tax evasion she was detained by law enforcement agencies on 13 February, 2015. The criminal cases on articles 284.2 and 125 of Criminal Code of the Republic of Azerbaijan were merged on February 19, 2015 with a view of ensuring comprehensive, full and objective investigation of criminal prosecution on several crimes committed by one person within single process. On these grounds the renewed charges against Khadija Ismayilova on the articles 179.3.2 (embezzlement or squander), 192.2.2 (illegal entrepreneurship), 213.1 (tax evasion), 308.2 (abuse of power) and 125 (incitement to a suicide) of the Criminal Code were announced on February 24, 2015. Her detention period was prolonged in connection with the complexity of the case.

33. On 1 September, 2015 Khadija Ismayilova was imprisoned to 7 years and 6 months. An appeal lodged by her defence to Baku Court of Appeal on 25 November 2015 was denied by the Court. Following this decision a cassation was lodged. By its decision from 25 May, 2016 the Supreme Court partially ensured the cassation, the decision Baku Court of Appeal from 25 November, 2015 was changed, the execution under the articles 179.3.2 and 308.2 was stopped, article 192 was partially lifted and she was sentenced to imprisonment for 3 years 6 months conditionally and was released from arrest immediately.

34. Criminal case was initiated under articles 192.2.2 (illegal entreprenеurship), 213.2.2 (tax evasion), 308.2 (abuse of power) of the Criminal Code of the Republic of Azerbaijan on September 22, 2015 regarding the activities of officials of the internet media outlet **"Meydan TV"** in order to provide comprehensive, full and objective investigation of all facts of illegal entrepreneurship, tax evasion and abuse of power. "Meydan TV" media outlet acted as a representative of foreign media outlet without due accreditation by the Ministry of Foreign Affairs of the Republic of Azerbaijan.

35. On 29 August, 2014 **Seymur Haziyev**, the Head of the Department of «Azadlig» newspaper, bluntly violated public order in his resident settlement, without a valid reason insulted a person with whom he entered later into conflict and inflicted body injuries by an object used as a weapon. By the decision of Absheron District Court from 29 January 2015, Mr. Haziyev was sentenced to 5 years of imprisonment on charges of hooliganism committed with a weapon or objects used as a weapon under Article 221.3 of the Criminal Code of the Republic of Azerbaijan. Appeal complaints and the cassation appeal were not satisfied by the relevant courts' decisions.

36. Arrest was imposed on accounts of the Azerbaijan representation of **"Azad Avropa/Azadlig radio"** in "Azerbaijan International Bank" OJSC during the period of continuation of criminal prosecution on the basis of court decision dated December 20, 2014 related to the necessity for investigation of information of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan about conducting of suspicious bank operations. During investigation, documents related to bank accounts and financial operations were taken, examination of the activity of Baku office of the radio by specialists of the Ministry of Taxes the Republic of Azerbaijan was organized.

37. No tax inspection has been conducted vis-a-vis **Media Rights** Institute as claimed by the Statement of the Special Rapporteur.

4. Freedom of information

38. 10 countrywide, 13 regional, 1 satellite, 1 foreign broadcaster, 17 cable TV channels and 15 internet providers operate throughout Azerbaijan. 13 radio and 3 regional radio stations are broadcasting daily. Public TV, Public Radio, 4 state TV channels (Azerbaijan Television, Sport-Azerbaijan, Culture and CBC Sport) and 2 radio channels (Radio Republic and Public Radio) are state financed. CBC Sport, Radio ASAN, 15 internet providers and 6 cable nets have obtained license during last 2 years.

39. Access to internet in Azerbaijan is without any restrictions. No ban is put on social networks. Users can join any social network without hindrance. Number of social network users is increasing continuously. Number of Facebook users in Azerbaijan is more than 1 700 000.

40. Access to internet is possible through wire line, wireless and mobile technologies. As a result of this, 77% of the population is internet user, while 72% is the broadband internet user.

41. According to the International Telecommunication Union's *Survey on Information Society* 2016, 77% of the population in Azerbaijan is the internet user, 62,4% of the

households have computers, while 76.7% of households have internet access, all of the 3 mobile operators have 3G and 4G services, 60.92% of the population is broadband internet user. This survey has placed the Republic of Azerbaijan in the 58th position among 193 states for the ICT index. According to the International Telecommunication Union/UNESCO State of Broadband 2016 report, Azerbaijan is in the 36th position among 191 states for the number of internet users.

42. Since 2000 a special license for operation of internet providers is not required in Azerbaijan. Any individual and legal entity can operate as an internet provider. Today the number of internet providers in Azerbaijan is 50. Only 3 of them (6%) are government bodies.

43. The National Strategy 2014-2020 for the development of information society in the Republic of Azerbaijan and State Programme for the implementation of the National Strategy 2014-2020 for the development of information society in the Republic of Azerbaijan were adopted recently.

44. Thus, legislation of the Republic of Azerbaijan guarantees a right to every person to search, obtain and spread information in a free and unrestricted way. The above-said issues are governed by the Constitution of the Republic of Azerbaijan, Laws of the Republic of Azerbaijan on "Freedom of Information", "the Right to Obtain Information", "Protection of information", "Requests of citizens". Freedom of the mass media is guaranteed in the country. The Law of the Republic of Azerbaijan on "Mass Media" prohibits state censorship on mass media. Today, a number of newspapers, magazines, radio and TV companies, and information agencies operate in Azerbaijan with vast opportunities to express their opinions, disclose any facts not constituting state secret.

45. Pursuant to the Law of the Republic of Azerbaijan on "State Registration and State Register of Legal Entities" permeating legal and organizational fundamentals of state registration and keeping of state register of legal entities in Azerbaijan, information on founders (participants) of legal entities and their volume of share in chartered capital is provided upon request to persons stipulated in the above-referred Law.

46. Recently, development of the information society in the country, benefiting from its possibilities, overall application of the ICT in the state management have been framed in the "National Strategy for 2014-2020 on development of the information society in the Republic of Azerbaijan", State Program for 2016-2020 on implementation of National Strategy for 2014-2020 on development of the information society in the Republic of Azerbaijan".

47. The work done in the field of formation of information society in Azerbaijan has been highly appreciated by the international organizations. "Measuring the Information Society" report of the International Telecommunication Union listed Azerbaijan among the first ten countries for its dynamics of development. The Republic of Azerbaijan ranked 53 among 139 world countries in "Network Readiness Index" in Global Information Technology Report 2016 of the World Economic Forum. The State of Broadband 2016: Broadband Catalyzing Sustainable Development report by the ITU/UNESCO Broadband Commission for Sustainable Development has ranked Azerbaijan 36th among 191 nations in terms of Internet using.

5. Freedom of association

48. The number of non-government organizations is increasing annually and has reached 4,369. The amount of grants allocated to NGOs in 2016 has increased approximately 2.5 times compared to 2015.

49. The Ministry of Justice created an electronic data base for state registered organizations called the "Individual Electronic Window". The NGOs effectively use the system.

50. Registration of any legislation acts, changes and amendments to the existing laws regulating NGO activities are discussed with NGO representatives. The Council of State Support to Non-Governmental Organizations under the President of the Republic of Azerbaijan acts as the organizer of the events, including public discussions. Members of Parliament, representatives of executive authorities and all interested NGOs are invited to the discussions.

51. The government puts forward a new strategy on financing of NGOs. The national donor system is intended to develop on the basis of this strategy.

52. According to the legislation, registration of branches and representations of foreign non-governmental organizations is carried out in the Republic of Azerbaijan according to the Agreements concluded with those organizations. This issue is regulated by the Rules approved by the 16 March 2011 Decision of the Cabinet of Ministers.

53. The main purpose of the amendments to the legislation on receiving grants by the NGOs is to ensure the principles of the open government, responsibility and transparency and simplification of this process.

54. The Cabinet of Ministers of the Republic of Azerbaijan prepared the regulations on obtaining foreign grants which are discussed by the civil society institutions, international partners and relevant agencies. Thus, the latest decree regulates the issue of giving grants to civil society institutions by the state agencies (central and local authorities).

55. According to the decree of the President of the Republic of Azerbaijan "On the application of the principle of "the single window" in the procedure of issue of grants by foreign donors on the territory of the Azerbaijan Republic" dated October 21, 2016, the "single window" principle is applied in the procedure of issuing of grants by the foreign donors on the territory of the Azerbaijan from 1 January, 2017. This decree creates new legislative basis. According to this decree:

- the "single window" principle is applied in the procedure of issuing of grants by the foreign donors in the territory of Azerbaijan from 1 January, 2017;
- the coordinating agency in each field is defined according to the "single window";
- according to the previous legislation, foreign donors had the right to initiate the process of giving grants in the territory of Azerbaijan. The new amendments will provide recipients with the right to take up this initiative.

56. To ensure implementation of the mentioned Decree, the Cabinet of Ministers of the Republic of Azerbaijan has issued decisions on modifications to the Rules on registration of grant agreements (decisions) and Rules on obtaining the right by foreign donors to issue grants on the territory of the Republic of Azerbaijan. They envisage among others the following:

- elimination of necessity of submission of some documents' copies approved by the notaries;
- prolongation of the period for presentation and consideration of grant contracts;
- reduction of number of documents for registration of grant contracts;
- time for consideration of the issuing grants has been reduced twice.

57. In relation to the suspension of activities of NGOs, it should be noted that in accordance with Article 16.3 of the Tax Code, a taxpayer has a right to temporarily stop

taxable operations within the tax year. Under the Law "On Non-Governmental Organizations (Public Associations and Foundations), NGOs and branches and representations of foreign non-governmental organizations may apply to the Ministry of Justice in order to suspend their activities. In practice, in the period before and after entry into force of the relevant amendments, no decision was adopted by the Ministry of Justice regarding suspension of any non-governmental organizations' activities. Applications regarding suspension of activity made by NGOs are not related to the amendments, but due to wishing to be exempt from releasing financial statements during their actual financial inactivity.

58. Freezing of any organization's bank account can be implemented in accordance with the legislation.

6. Freedom of peaceful assembly

59. The issues of limits of implementation of freedom of assembly are reviewed within the context of constitutional norms regulating the fundamental human rights and freedoms in whole. In order to take necessary measures under article 5 of the Law of the Republic of Azerbaijan "On freedom of assembly", the local executive power authority is notified in writing for agreement of the time and place of holding the assembly and the route of the rally. Besides, in accordance with Article 3 of the Constitutional Law "On regulation of implementation of human rights and freedoms in Azerbaijan" and Article 11 of the Convention "On the protection of human rights and fundamental freedoms", the restrictions may be imposed on the right of freedom of assembly that is necessary in the democratic society, as provided for in the Article 49 of the Constitution.

60. The facts of intervention by the state to the meetings organized and held as defined in the Law "On freedom of assembly" were not recorded. Some organizers attempted to hold the meetings without prior notice. The law enforcement authorities have intervened in such meetings by applying the principle of expediency and proportionality defined by the law. The administrative reproaches and other responsibility measures applied about the separate persons for the actions conducted illegally are implemented within the framework of the legislation of the Republic of Azerbaijan and the requirement and recommendations of international documents on human rights and freedoms. The Ministry of Internal Affairs assesses in its internal supervision manner the proportionality of the measures taken and makes serious steps in case of occurrence of violations. Similar inspections are implemented by the Office of the General Prosecutor within the framework of procedural legislation.

61. According to Article 49 of the Constitution of the Republic of Azerbaijan, "Everyone has the right for meetings. Everyone has the right, having notified respective governmental bodies in advance, peacefully and without arms, meet with other people, organize meetings, demonstrations, processions, place pickets ".

62. The Law "On freedom of assembly" was adopted in order to ensure implementation of the Article 49 of the Constitution on 13 November 1998.

63. The Amendments to the Law "On "Freedom of Assembly" with the recommendations of Venice Commission of the Council of Europe, OSCE and national NGOs, came into force on May 30, 2008. The Amendments ensure the right to an effective remedy of legal advocacy procedures. In the case of prohibition or restriction of realization of the right on assembly, the court should handle the appeal and make a decision until the meeting time.

64. Some restrictions on meeting places are envisaged in legislation. The list of places, where gatherings, meetings, demonstrations and rallies can be prohibited was defined. The strategic assets, as well as, territory used for military purposes are included.

65. The other reasons of prohibition on mass actions are provided in legislation. These are:

- for the protection of the rights and freedoms of others;
- in order to prevent a breach of public order;
- for the prevention of disorder or crime;
- for the protection of public health;
- for the protection public morals.

7. Right to participate in public affairs

66. Enactment of the Law of the Republic of Azerbaijan "On Public Participation" in 2013 further stimulated the broadening of cooperation with civil society institutions, competences of Public Committee were further expanded in line with the Law, also the term of competence was increased and the Committee is actively involved in works conducted in various fields of justice.

67. There are different dialogue platforms where civil society and governmental bodies act jointly. Decisions are made in the form of consensus in majority of them and decisions without NGOs' vote cannot be made. Principle cooperation and dialogue platforms are the following:

1) Board of the State Support of the Municipalities under President of the Republic of Azerbaijan consists of 11 persons. 8 of them are the members of NGOs and 3 of them are the governmental representatives (Presidential Administration, Ministries of Justice and Finance). Members of NGOs shall be elected through secret voting and approved by the President for 4 years. Council provides financial aid (grants), organizational, consultative and methodical support for NGOs.

2) Multilateral Group on Transparency Initiative in Mine Exploration;

3) Joint Working Group on Human Rights, consisting of government, parliament and NGO members, as well as human rights defenders. The Group was set up in 2006 as a joint initiative of the Council of Europe and the Government of Azerbaijan;

4) Commission on Pardon under the President (there are members of NGOs and mass media);

5) Platform of Government and Civil Society on the Support to the Open Government-10 state bodies (including the Presidential Administration) and 31 NGO representatives;

6) Commission on early release of prisoners – Representatives of Ministry of Justice and NGOs;

7) Public Councils within the bodies of central and local executive authorities – formed through the election process in accordance with the Law on Public participation;

8) "Orkhus Center" under the Ministry of Ecology and Natural Resources.

68. The Ministry of Justice carries out effective mutual activity with civil society institutions and the Public Committee.

C Specific groups of human rights defenders at risk

69. According to the Constitution of the Republic of Azerbaijan all people are equal before the law and the court. The state guarantees equality of rights and freedoms of everyone, irrespective of race, nationality, religion, language sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organizations.

D. Access to Justice

70. In accordance with Paragraph I of Article 127 of the Constitution of the Republic of Azerbaijan and Article 100 of the Law "On Courts and Judges", judges are independent and subordinate only to the Constitution and laws of the Republic of Azerbaijan.

71. In case of interference with the work of a judge, he/she shall refer to the Judicial-Legal Council in this regard.

72. In accordance with the Law "On Courts and Judges", mechanism for preventing external interference with the work of judges by the Judicial-Legal Council was established, for the purpose of strengthening independence of judges, decrease of judge salary during the term in power was prohibited, and proposals on financial procurement of first instance courts presented to the Ministry of Finance are to be accompanied by the opinion of the Judicial-Legal Council.

73. Provisions on independence of judges have also been reflected in Article 25 of the Criminal Procedure Code and Article 7 of the Civil Procedure Code of the Republic of Azerbaijan.

74. Additionally, in accordance with the Laws "On Judicial-Legal Council" and "On Courts and Judges", ensuring independence of judges was included in the competence of the self-government organ of the judiciary - the Judicial-Legal Council, 9 out of 15 members of the Judicial-Legal Council are judges representing various courts. Interference with Judicial-Legal Council's work by any other organ is not permitted.

75. It should be noted that, only judge members of the Judicial-Legal Council participate in the voting to adopt a decision on disciplinary proceedings, with the exception of the President of the Supreme Court of the Republic of Azerbaijan and the reporting judge.

76. Besides, in accordance with the Law "On Judicial-Legal Council", for the purpose of strengthening independence of the Council, as well as decreasing the role of the executive power, the competence to appoint judge members representing courts of first and appeal instances in the Council was revoked from the Supreme Court and the Ministry of Justice, and was entrusted to the Council itself based on direct proposal made to the Council by the Judges Associations; the Council's competence was enhanced so that, unlike the past procedure, now the Presidents of the Courts of Appeal and the Court on Grave Crimes are also appointed based on the recommendation of the Council.

77. Selection of judges is conducted in line with international standards through multistage sophisticated selection by test, as well as written and oral examination in full transparency. It is even broadcasted online on the internet. This modern judge selection system allows discovering judgeship assets with high theoretical and practical knowledge. Thus, the European Commission for the Efficiency of Justice, being interested in the selection of judges in our country, created an esteemed group of experts and followed this process firsthand. The European experts, having observed all stages of the selection process, have distinguished its transparency, objectivity, and neatness in their report. The report was widely discussed at the Commission's meeting with participation of

representatives from all Council of Europe member states, and adopting a special decision in this regard, Azerbaijan's experience was evaluated as an interesting model of best practice.

E. National human rights institution

78. According to the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, the mandate of the Commissioner is to restore the human rights and freedoms violated by governmental and municipal bodies and officials of the Republic of Azerbaijan, as well as to prevent violation of human rights in cases envisaged in the Constitutional Law. These functions were extended in 2010, by empowering the institution with the functional as a National Preventive Mechanism (NPM) under the "Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

79. Ombudsman Institute was accredited with "A" status in 2006 by the Subcommittee on Accreditation (SCA) of the International Coordinating Committee on National Human Rights Institutions (ICC) and registered as a National Human Rights Institution in United Nations (UN) system. After the special review by the SCA it was re-accredited with "A" status in 2012. With this accreditation, Ombudsman Institute once again proved that the Constitutional Law and the activities of the Commissioner are in full conformity with Paris Principles.

F. Protection policy for human rights defenders

80. According to the Constitution of the Republic of Azerbaijan all people are equal before the law and the court. In this regard, human rights defenders cannot be segregated into a specific group which is in need of specific policies or mechanism to be protected.

IV. International and regional cooperation

81. Azerbaijan is a member of numerous international and regional organizations, as well as participates in a number of international initiatives. Developing multilateral diplomacy and forming positive agenda within the international organizations is one of the main priorities of foreign policy of Azerbaijan. Azerbaijan attaches particular importance to cooperation with the UN and its specialized institutions as a universal international organization and to reforming and increasing the efficiency of UN main bodies such as the Security Council and the General Assembly.

82. In June 2016, Azerbaijan gained the votes of 176 out of 184 countries that participated in voting at the UN General Assembly and was elected a member of the UN Economic and Social Council for 2017-2019. Along with being the central platform for professional discussions about sustainable development, ECOSOC will give Azerbaijan additional opportunities to contribute to international development.

83. Azerbaijan also demonstrated activity in other international organizations of which it is a member and made proposals to identify new formats of cooperation. In this regard, we can note the OSCE, the Council of Europe, CIS, the Cooperation Council of Turkic-Speaking States, the Economic Cooperation Organization, the Black Sea Economic Cooperation Organization and others.

84. As regards the allegations on non-execution of the rulings of the European Court of Human Rights in the context of Ilgar Mammadov case, it has to be underlined that the

Court in its judgment did not call for an immediate release of Ilgar Mammadov. The Court's judgment concerns the lawfulness of the applicant's pre-trial arrest and is therefore irrelevant to the applicant's current legal status.

85. Consistent measures are being carried out to restore Azerbaijan's full participation in EITI and OGP. These measures include, inter alia adoption of the National Action Plan (NAP) on open government promotion for 2016-2018, modifications to the legislation on registration of grant agreements and obtaining the right to issue grants, establishment of Open Government-Civil Society platform, creation of e-platform for monitoring implementation of NAP on open government promotion and etc.